

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 JANUARY 4, 2007

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday,
5 January 4, 2007, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

8 MEMBERS PRESENT: C.A. Pantle, Chairman
9 Gary Noffsinger
10 Ward Pedley
11 Marty Warren
12 Sean Dysinger
13 Ruth Ann Mason
14 Judy Dixon
15 Clay Taylor
16 Stewart Elliott, Attorney
17 Madison Silvert, Attorney

18 CHAIRMAN: Let's call the meeting to order.
19 We're going to start a couple of minutes early.

20 First thing I want to welcome each one of you
21 here. Tell you we start our meetings with a prayer
22 and the pledge to allegiance. We'll invite you to
23 join with us if you so desire. Madison will have our
24 prayer this evening.

25 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I want to welcome each one of you
to the Owensboro Metropolitan Board of Adjustment
this evening.

If you have anything you want to add to any

1 item or talk on it, please come to one of the podiums,
2 state your name, be sworn in so we can have everything
3 recorded here, please.

4 With that the first item we'll need to bring
5 up is the minutes of the last meeting on December 7th.
6 They're in the office. There's no problems or
7 questions at this time. Anybody have anything they
8 want to add?

9 (NO RESPONSE)

10 CHAIRMAN: If not entertain a motion to
11 dispose of the item.

12 MS. DIXON: Move to approve.

13 MR. PEDLEY: Second.

14 CHAIRMAN: A Motion has been made and a
15 second. All in favor raise your right hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries.

18 The next item being this is the first of the
19 year, the first thing we need to do is election at
20 this time. I'll turn it over to our attorney to hold
21 the elections.

22 MR. ELLIOTT: In accordance with our bylaws,
23 we have an election of officers the first meeting in
24 January for the year 2007. So at this time I'll open
25 nominations for the office of chairman.

1 MS. MASON: I'll nominate Audie Pantle for
2 chairman.

3 MR. DYSINGER: I second the nomination.

4 MR. ELLIOTT: Are there any other nominations?

5 MR. PEDLEY: I make a motion nomination cease.

6 MR. ELLIOTT: A motion that nomination cease.

7 All in favor.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 MR. ELLIOTT: Mr. Pantle, you're now chairman.

10 Now we have office of vice chairman. Do we
11 have a nomination for vice chairman.

12 MR. PANTLE: I nominate Ward Pedley.

13 MR. DYSINGER: Second.

14 MR. PANTLE: Move he be elected by
15 acclamation.

16 MR. ELLIOTT: All in favor.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 MR. ELLIOTT: Now we have a vice chairman.

19 Now we have the office of secretary.

20 MS. DIXON: I nominate Ruth Ann Mason.

21 MR. ELLIOTT: Do we have a second?

22 MR. DYSINGER: Second.

23 MR. PANTLE: Move nomination cease she be
24 elected by acclamation.

25 MR. ELLIOTT: We have a motion that nomination

1 cease. All in favor.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 MR. ELLIOTT: We now have secretary.

4 That concludes the elections, Mr. Chairman.

5 CHAIRMAN: Next item.

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7 CONDITIONAL USE PERMIT

8 ITEM 2

9 811 East Parrish Avenue
10 1000, 1020 Breckenridge Street
11 915, 1325 Triplett Street
12 1215, 1219, 1309 Pearl Street, zoned B-4, P-1
13 Consider request for a Conditional Use Permit in order
14 to amend an existing conditional use permit for the
15 operation of a general hospital and related health
16 care facilities to construct an addition of 2,140
17 square feet on the second floor of the existing
18 hospital building for surgery suites.
19 Reference: Zoning Ordinance, Article 8, Section 8.2C1
20 Applicant: Owensboro Medical Health System, Inc.

21 MR. NOFFSINGER: Mr. Chairman, this
22 application has been advertised for public hearing at
23 this time. All adjoining property owners have been
24 notified. Becky Stone is here to read a brief Staff
25 Report into the record.

26 MR. ELLIOTT: State your name, please.

27 MS. STONE: Becky Stone.

28 (MS. BECKY STONE SWORN BY ATTORNEY.)

29 MS. STONE: The properties identified on the
30 application comprise the Owensboro Medical Health

1 System Campus and are approved under a final
2 development plan which includes the hospital, parking
3 facilities, and health care facilities including
4 offices for health care professionals. The previous
5 conditional use permits and final development plans
6 have been approved for the properties.

7 The hospital use is conditionally permitted in
8 the P-1 and B-4 zones. The applicant is requesting to
9 amend the conditional use permit under which they are
10 operating to include a surgical suite on the second
11 floor of the existing hospital building. No other
12 alterations on the site are proposed. An amendment to
13 the previously approved final development plan has
14 also been submitted. The foot print of the hospital
15 building will not change. The first floor has been
16 previously been designed to accommodate this second
17 floor addition.

18 If approved special conditions should include
19 approval of the revised final development plan.

20 CHAIRMAN: Any other comments from the Staff?

21 MR. NOFFSINGER: No, sir.

22 MR. WARREN: Mr. Chairman, I need to remove
23 myself from this item, please, since it's my place of
24 employment.

25 CHAIRMAN: So noted.

1 Any opposition filed in the office?

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: Does the applicant have anything
4 you would like to add at this time?

5 MR. ELLIOTT: State your name, please.

6 MR. ELLIOTT: Mike Sullivan.

7 (MR. MIKE SULLIVAN SWORN BY ATTORNEY.)

8 MR. SULLIVAN: Good evening. Mike Sullivan,
9 attorney for the applicant.

10 I simply wanted to tell you all that the
11 hospital is here represented by Bill Alton,
12 administrative director of facilities to my right, and
13 Jim Morris, construction manager right next to Bill.
14 We are here to answer any questions you may have.

15 This is over what I call the old emergency
16 room. It was on the west side of the hospital.

17 CHAIRMAN: Any members of the board have any
18 questions of the applicant at this time?

19 (NO RESPONSE)

20 CHAIRMAN: Staff have any additional comment?

21 MR. NOFFSINGER: No, sir.

22 CHAIRMAN: Hearing none entertain a motion to
23 dispose of the item.

24 MS. MASON: Mr. Chairman, I move for approval
25 with the conditions of the approval of the revised

1 development plan. My findings are that the footprint
2 of the hospital building won't change. The first
3 floor was designed to accommodate this addition. It's
4 a similar use that it originally was the conditional
5 use permit was for.

6 CHAIRMAN: Is there a second to the motion?

7 MR. DYSINGER: Second.

8 CHAIRMAN: A motion has been made and a
9 second. Any other questions or comments from the
10 board?

11 (NO RESPONSE)

12 CHAIRMAN: Any other comments from the Staff?

13 MR. NOFFSINGER: No, sir.

14 CHAIRMAN: Hearing none all in favor raise
15 your right hand.

16 (ALL BOARD MEMBERS PRESENT - WITH THE
17 DISQUALIFICATION OF MR. WARREN - RESPONDED AYE.)

18 CHAIRMAN: Motion carries.

19 Next item, please.

20 ITEM 3

21 5 Plum Street, zoned R-4DT
22 Consider request for a Conditional Use Permit in order
23 to construct a private boat dock in a floodway.
24 Reference: Zoning Ordinance, Article 18,
25 Section 18-6(b)(2)(f)
Applicant: Brenda McAlister

MR. NOFFSINGER: Mr. Chairman, this

1 application has been reviewed by the Planning Staff.
2 It's found to be in order. It has been advertised for
3 public hearing at this time and all the adjoining
4 property owners have been notified.

5 Becky Stone has a Staff Report that she would
6 like to read and enter into the record.

7 MS. STONE: The property is located on the
8 river front and the applicant proposes to construct a
9 private boat dock.

10 The Zoning Ordinance requires a conditional
11 use permit for the construction of a boat dock in a
12 floodway. It also requires approval from the Army
13 Corp of Engineers, the Kentucky Division of Water, and
14 a statement from a licensed engineer that there will
15 be no impact on the floodway by the proposed project.
16 The applicant has submitted both approvals and an
17 engineer's letter with her application and meets the
18 requirements of the zoning ordinance to apply for a
19 conditional use permit for a private boat ramp.

20 Any special conditions would be subject to any
21 additional requirements of the Army Corp of Engineers
22 and the Kentucky Division of Water.

23 We would enter the Conditional Use Permit
24 Staff Report into the record as Exhibit B.

25 CHAIRMAN: Any other comments from the Staff?

1 MR. NOFFSINGER: No, sir.

2 CHAIRMAN: Is there any opposition filed in
3 the office?

4 MR. NOFFSINGER: No, sir.

5 CHAIRMAN: Is the applicant here wishing to
6 add anything at this time?

7 APPLICANT REP: No.

8 CHAIRMAN: Any board members have any
9 questions of the applicant?

10 MR. DYSINGER: Becky, just for the record.
11 The letter from the engineer, does it indicate that
12 there will not be a negative impact on the floodway?

13 MS. STONE: That's correct.

14 CHAIRMAN: Staff have any other comments at
15 this time?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Entertain a motion to dispose of
18 the item.

19 MR. DYSINGER: Mr. Chairman, move to approve
20 given the findings that the applicant has the approval
21 of the Corp of Engineers, Kentucky Division of Water,
22 as well as a letter from a licensed engineer stating
23 that there will be no impact on the floodway, and as
24 there appears to be no opposition.

25 CHAIRMAN: Is there a second to the motion?

1 MS. DIXON: Second.

2 CHAIRMAN: Any other comments from the board?

3 (NO RESPONSE)

4 CHAIRMAN: Staff have anything else?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Hearing none all in favor raise
7 your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries.

10 Next item, please.

11

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VARIANCES

13 ITEM 4

14 4419 Wexford Crsg, zoned R-1C
15 Consider request for a Variance to reduce the front
16 building setback from 25 feet to 24.18 feet in order
17 to bring an existing residence into compliance.
18 Reference: Zoning Ordinance, Article 8,
19 Section 8.57(c)
20 Applicant: Bill Jones Master Builder, Homes by Benny
21 Clark

18

19 MR. NOFFSINGER: Mr. Chairman, this
20 application has been reviewed by the Planning Staff.
21 It's found to be in order. The application has been
22 advertised for public hearing at this time and all
23 adjoining property owners have been notified.

24 The Staff has provided each board member with
25 a Variance Staff Review which you have had time to

1 read.

2 Give you a little history on this property.
3 The residence was constructed in 1997. That was prior
4 to the OMPC issuing building permits in this
5 development. This building permit was issued by the
6 Daviess County Building Inspector at that time.
7 However, apparently an error was made in locating the
8 home on the lot. The home does encroach into the 25
9 foot setback.

10 The Staff has found that the encroachment
11 would not adversely affect the public health, safety
12 or welfare; will not alter the essential character of
13 the general vicinity; will not cause a hazard or a
14 nuisance to the public; and will not allow an
15 unreasonable circumvention of the zoning ordinance and
16 regulations. We say that because the permit was
17 issued for the construction of this building and the
18 proper inspections were made at the facility.
19 However, during that inspection process, the error was
20 not caught. Such a small discrepancy that the way the
21 street curves in that area it's certainly
22 understandable how an error could be made.

23 It is also, if you drive along this street,
24 the error is not noticeable. You would not, an
25 inspector would not notice this encroachment unless

1 you actually did a survey to determine the proximity.

2 With the errors that have been made, I think
3 there was no willful violation here. I think it was
4 just an honest mistake. In fact, that home has been
5 there since 1997. We would recommend that you
6 consider this variance favorably.

7 We do have one condition. That is if you
8 approve this variance, grant it specific to the
9 existing encroachment and does not extend to future
10 building additions that may occur on the site.

11 MR. PEDLEY: Mr. Chairman, I disqualify myself
12 on this item.

13 CHAIRMAN: So noted.

14 Is there any opposition in the office?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: Is the applicant here that has any
17 statements?

18 (NO RESPONSE)

19 CHAIRMAN: Any board members have any comments
20 at this time or any motion?

21 (NO RESPONSE)

22 CHAIRMAN: Entertain a motion to dispose of
23 the item.

24 MR. WARREN: I make a motion that we grant
25 this variance due to the findings that it will not

1 adversely affect the public health, safety or welfare;
2 it will not alter the essential character of the
3 general vicinity; it will not cause a hazard or a
4 nuisance to the public; and it will not allow an
5 unreasonable circumvention of the requirements of the
6 zoning regulations. I'd also like to add that the
7 condition being that this variance were granted to
8 this specific incident only and would not apply to
9 future building additions.

10 CHAIRMAN: Is there a second to the motion?

11 MR. DYSINGER: Second.

12 CHAIRMAN: A motion has been made and a
13 second. Any other comments or questions from the
14 board?

15 (NO RESPONSE)

16 CHAIRMAN: Staff have any other comments?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Hearing none all in favor raise
19 your right hand.

20 (ALL BOARD MEMBERS PRESENT - WITH THE
21 DISQUALIFICATION OF MR. PEDLEY - RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 Next item, please.

24 ITEM 5

25 501, 601 Commerce Drive, zoned B-1

1 Consider a request for a Variance to waive the
2 vehicular use area landscaping perimeter requirement
3 and a Variance to waive the vehicular use area
4 landscaping interior requirement.
5 Reference: Zoning Ordinance, Article 17, Sections
6 17.312, 17.32
7 Applicant: Kermit Speer, Bruce Speer, Gary Melvin

8 MR. NOFFSINGER: Mr. Chairman, this
9 application has been reviewed by the Planning Staff.
10 The application is found to be in order. It has been
11 advertised for public hearing at this time and all
12 adjoining property owners have been notified.

13 Becky Stone is here tonight to read a Variance
14 Staff Review. Each member has received a copy of and
15 she'd like to read that into the record.

16 MS. STONE: There are no special circumstances
17 that do not generally apply to land in the general
18 vicinity or in the same zone.

19 The subject property is located in a B-1
20 Neighborhood Business Center Zone. This zone was
21 established to promote sound, consolidated
22 neighborhood-oriented shopping facilities in newly
23 developing urban areas. The subject property is
24 subject to a development plan that was approved by the
25 OMPC in October of 1992. At that time 252 parking
spaces were shown on the development plan. The
ordinance in effect at that time would have required
224 parking spaces. The pavement coverage indicated

1 100,000 square feet of vehicular use area. Five
2 thousand square feet of interior landscaping (5% of
3 the VUA area) was shown and approved on the final
4 development plan. At the time of the development plan
5 approval the 0.5 acre tract (501 Commerce Drive)
6 adjacent to the street was not included and the plan
7 indicated that this tract would be subject to
8 development plan approval prior to development.

9 I would like to enter the Development Plan
10 into the record. I think you all have a copy of that.

11 In August of 2006, Jim Mischel, the Zoning
12 Administrator, sent a violation to 601 Commerce Drive
13 in response to a complaint that he received regarding
14 the display area and outdoor storage in the parking
15 lot and street right-of-way. The violation stated
16 that the site was in violation of the Development Plan
17 approved October 29, 1992. It also stated that the
18 OMPC requires that the minimum amount of parking
19 spaces be available for customers at all times and
20 outdoor storage in the right-of-way is not permitted.
21 The Notice of Violation also states that the property
22 does not meet the requirements of the Owensboro
23 Metropolitan Landscape Regulations, Article 17,
24 Section 17,311, 17.312 and 17.32.

25 Since the violation was issued, the city and

1 county have amended the Zoning Ordinance to reduce the
2 number of parking spaces required for retail sales
3 establishments. This change reduced the amount of
4 parking required for this building from 224 to 166
5 spaces and gave the applicant the ability to revise
6 the development plan to show the new parking required
7 to identify the outdoor display area, to show that
8 outdoor display and storage will be located off of the
9 public right-of-way, to show the required landscaping,
10 and to show any outdoor storage to be screened. The
11 revised development plan also gives the applicant the
12 opportunity to include the 0.5 acre tract at 501
13 Commerce Drive in the final development plan for
14 approval.

15 The revised final development plan was
16 submitted without the required perimeter or interior
17 landscaping as required by Article 17 of the Zoning
18 Ordinance. Additionally, the Zoning Administrator
19 conveyed to the applicant's engineer that several
20 items that are placed on the site do not qualify as
21 outdoor display, but are in fact outdoor storage and
22 should be screened. That is the subject of the next
23 item on the agenda under Administrative Appeals.
24 There is no difference in this retail establishment
25 from other retail uses that are required to install

1 interior landscaping and perimeter vehicular use area
2 landscaping along street rights-of-way within the
3 urban service area. It is a requirement of the
4 ordinance and would visually benefit the site as it
5 does other similar types of sites within the urban
6 service area. There is no special circumstance that
7 demonstrates that this site should be exempt from
8 landscaping requirements that are applied consistently
9 to these types of developments. There is no reason to
10 allow the interior or perimeter vehicular use area
11 landscaping to be waived.

12 The strict application of the regulation does
13 not deprive the applicant of reasonable use of the
14 land or create an unnecessary hardship on the
15 applicant.

16 The installation of the required landscaping
17 is not an undue hardship on the applicant. All like
18 sites in Owensboro, Whitesville and the urban service
19 area have the same requirements. With the reduction
20 of the amount of parking required at this site and the
21 inclusion of the 501 Commerce Drive into the
22 development plan, the applicant has more flexibility
23 to determine the areas of outdoor display and to
24 provide the appropriate amount of parking required at
25 this site and the inclusion of the 501 Commerce Drive

1 into the development plan, and to provide the
2 appropriate landscaping requirements. The applicants'
3 argument that Commerce Drive serves only two
4 businesses does not eliminate the need for
5 landscaping. The public travels on the street to
6 access the business located there, whether there are
7 two businesses or fifty businesses. Commerce Drive is
8 a public street and as such, the site should be
9 landscaped along the public right-of-way boundary.
10 The applicants' arguments that they should not be
11 required to landscape because a large portion of their
12 business is based on outdoor display also falls short.
13 The parking space requirements have been reduced
14 recently giving Rural King more area to devote to
15 outdoor display without encroaching into required
16 parking, so it should be easier to provide the
17 landscaping under a revised development plan that has
18 a lesser parking requirement. The applicants'
19 argument that the outdoor display areas services as a
20 screen is not valid. Green type screening in the form
21 of a three foot high continuous element and a tree
22 every 40 linear feet would serve as a screen to the
23 outdoor display areas located on the site and benefit
24 the site aesthetically. The original complaint was
25 based on the amount of outdoor display located on the

1 lot and while the site is allowed to have designated
2 outdoor display areas, the landscaping would serve to
3 make the site more visually pleasing. The applicants
4 state that the variance will preserve the public
5 safety and welfare and will not alter the essential
6 character of the neighborhood because there have not
7 been complaints concerning the existing landscaping.
8 The absence of a complaint is not sufficient or
9 competent evidence to argue that this site is in any
10 way different from other similar sites conducting
11 retail businesses with outdoor display and does not
12 provide factual evidence that the board can use to
13 make a finding that the public safety and welfare are
14 being preserved by the lack of landscaping.
15 Additionally, the installation of the perimeter
16 landscaping adjacent to the public right-of-way will
17 help ensure that the outdoor display area stays within
18 the site and does not spread to the right-of-way which
19 was the case at the time of the notice of violation,
20 protecting the public safety by keeping products off
21 of the public right-of-way. We also disagree with the
22 applicants' statement that the store functions as a
23 home improvement center and would be like an
24 industrial business which does not require interior
25 landscaping. The Staff's opinion is that this is no a

1 retail store selling a wide variety of merchandise to
2 the general public and farming community and is not a
3 home improvement center.

4 Looking on their web site today the
5 departments that they list that they have products in
6 are automotive, clothing, collectables, domestics,
7 farm, hardware, home products, lawn and garden,
8 outdoor living, pet supplies, sporting goods, tools,
9 toys and gift certificates.

10 We also have a weekly on-line sales flyer that
11 we'll enter into the record that shows the variety of
12 products that are sold at the site.

13 The strict application will not cause undue
14 hardship on the applicant. The installation of
15 landscaping in a retail center is a required and
16 expected cost of conducting business on the site and
17 an exception for any retail establishment should not
18 be made unless there is some type of compelling
19 physical or topographical condition on the site that
20 prevents the installation of that requirement.
21 Otherwise, the Board will set a precedent to eliminate
22 landscaping because a business owner decides that they
23 do not want it. The elimination of landscaping
24 requirements on this site is an unreasonable
25 circumvention of the zoning ordinance and should not

1 be allowed.

2 We do not know if the circumstances from which
3 relief is sought is a result of willful actions taken
4 by the applicant. The previously approved development
5 plan showed landscaping existing on this site. We do
6 not know when the landscaping was removed or by whom.
7 If it was removed by this applicant, it was done so in
8 violation of the development plan and the Zoning
9 Ordinance.

10 Granting this Variance may adversely affect
11 the public health, safety or welfare, because it could
12 allow display area to encroach on the public
13 right-of-way, as was the case when the violation was
14 sent out.

15 It may not alter the essential character of
16 the general vicinity; it may not cause a hazard or a
17 nuisance to the public, but it will allow an
18 unreasonable circumvention of the requirements of the
19 zoning regulations.

20 The Staff recommends denial. Regardless of
21 the outcome of the appeal, a final development plan is
22 still being approved by the OMPC. The plan must
23 identify the fixed outdoor display area that cannot
24 encroach into the required parking or landscaping.

25 We did have a call from a person who

1 identified themselves as an adjoining business owner
2 who indicated that they thought the requirements of
3 the Zoning Ordinance should be met. I think that Jim
4 had a call also. I'll let him speak to that.

5 MR. ELLIOTT: State your name, please.

6 MR. MISCHEL: Jim Mischel.

7 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

8 MR. MISCHEL: Let me give you a little history
9 on this while we're here.

10 Becky has stated that we sent a letter out
11 August 24th. Actually this case started back April
12 11th. I got a call in office. Kind of what started
13 this whole thing was there was a lady that had an
14 accident out in the parking lot, a wreck. Her husband
15 called and stated that the cause of the accident was
16 because of all this material sitting out there. It
17 was just everywhere. She had a wreck where she didn't
18 see someone come around.

19 April 11th I sent a letter to the owners kind
20 of stating what the problem was and we needed to get
21 together and kind of seek a solution on this.

22 So from April to August we were in dialog.
23 Evidently in August I felt like it wasn't going
24 anywhere. That's when I sent the official letter of
25 violation out.

1 From August to this point we've had more
2 discussions and finally they appealed this to the
3 board.

4 Got a couple of hand-outs. I've got a copy of
5 this development plan. I thought it would be good if
6 everybody could take a look at it.

7 . We highlighted the green. This was the
8 development plan that was approved in 1992. This
9 would show you what was approved in '92, as far as the
10 landscaping, the required landscaping, to give you an
11 idea of what we're talking about. Those are the items
12 they wish to get a variance from.

13 Historically, as far as zoning enforcement, I
14 see a problem with this variance. We still get calls
15 from people back I'd say 20, 25 years ago there used
16 to be a few variances given on landscaping. I still
17 hear about those. People say, how come that place
18 wasn't landscaped? They've got a variance. Most
19 people say, that's not right. Everybody ought to have
20 to do the same thing. We still hear about that.

21 I feel like if this is granted you're going to
22 see more of these variances down before.

23 I don't know if you have any questions on that
24 landscaping. I do believe if this material had been
25 off the right of way -- I don't know. I wasn't there

1 the day the accident happened. I can't tell you what
2 caused it or anything. The times I've been out there,
3 there's material at different locations. So I don't
4 know if that caused it or not.

5 It seems like the landscaping, if it was put
6 in, it would, kind of more define the area of traffic
7 flow.

8 I don't know if you have any questions at this
9 time.

10 MR. PEDLEY: Yes, I have a couple of
11 questions, Jim.

12 On existing landscaping, you're showing here,
13 this development plan was 1992. Was that landscaping
14 ever installed or do you know if it was or not?

15 MR. MISCHEL: I don't have any idea.

16 MR. PEDLEY: You don't know if it was
17 installed and removed.

18 MR. MISCHEL: No, sir, I don't.

19 MR. PEDLEY: But this plat was in 1992; is
20 that correct?

21 MR. MISCHEL: Yes.

22 MR. DYSINGER: But the landscaping is not
23 there now, the highlighted area?

24 MR. MISCHEL: That's right. There could be
25 one, but for all purposes it's not.

1 CHAIRMAN: Board members have any other
2 questions of the Staff at this time?

3 MR. PEDLEY: I have one other question.

4 Back when the Zoning Ordinance was updated, we
5 went from parking lots with 30,000 square feet or more
6 that required interior landscaping, that was raised to
7 50,000 square feet. Has that been taken into
8 consideration on this?

9 MS. STONE: This parking area shows 100,000
10 square feet of vehicular use area. So it would hit
11 that 50,000. It's five percent over 50,000 and three
12 percent over 30,000 now. So it would require the five
13 5 percent of landscaping at this time.

14 MR. PEDLEY: Even after the parking reduction
15 still would?

16 MS. STONE: Yes. Their vehicular use area
17 would still be over 50,000 square feet.

18 CHAIRMAN: Board have any other questions?

19 (NO RESPONSE)

20 CHAIRMAN: The applicant ready? Come forward.

21 MR. ELLIOTT: State your name, please.

22 MR. KAMUF: Charles Kamuf.

23 (MR. CHARLES KAMUF SWORN BY ATTORNEY.)

24 MR. KAMUF: I represent Rural King. We have a
25 regional president here with us tonight, Don Davis.

1 We also have the manager of the Rural King, Mr. Greg
2 Hart. He is here to testify.

3 Now, as far as parking, that's over. That's
4 not an issue, is it? We've got 150. The ordinance
5 requires 150 parking places. We've got 199. You
6 didn't bring up something that's not on the agenda,
7 did you? We meet all the requirements for the
8 parking.

9 MR. MISCHEL: I think she had stated that we
10 have changed the parking ratio, but we haven't seen
11 your final plan either. Until that's filed, I can't
12 really tell you if it meets it or not.

13 MR. KAMUF: According to the application that
14 we have, that's not an issue here. In other words --

15 MS. STONE: Our only issue with the parking
16 would be that the outdoor display area on your
17 development plan would need to be identified and set
18 so that it shows that required parking as available at
19 all times.

20 MR. KAMUF: I understand. I misunderstood
21 you.

22 I think most of you are familiar with Rural
23 King. It's up on Highway 60. The area that you see,
24 here's McDonald's. This area is Commerce Drive.
25 Commerce Drive starts at McDonald's and comes all the

1 way back to the back and it ends in a big field in the
2 back behind Rural King.

3 We've owned that property since 1996. Mr.
4 Davis is here to tell you that he's been the CEO of
5 that organization for 11, 12, 13 years, and that he
6 had no knowledge whatsoever of any violation that was
7 occurred up there.

8 As you know, Stewart, in running a title
9 opinion, these development plans are not recorded in
10 the courthouse. If I run the title, I don't run into
11 that development plan.

12 It will be his testimony that they've been up
13 there since 1996 and that there has never ever been a
14 complaint of any of it. To the best of his knowledge
15 there has not been any violation or complaint made to
16 him. Certainly it's his opinion that there has not
17 been anything removed.

18 Prior to that I think there was a furniture
19 store up there prior to 1996.

20 In this particular area along the front, the
21 only violation that we have along the front is the
22 shrubs. We have the trees. The trees have been there
23 for years. So that's the plan that we see there.

24 We are using the interior of the parking lot,
25 some of these areas that you see, for display items at

1 the present time. As far as my knowledge, in other
2 words, we've notified all six property owners adjacent
3 to it and we've never had any problem with McDonald's
4 or any of the neighbors to the best of our knowledge.

5 As a matter of fact, the local manager is here
6 to confirm that.

7 They get along with their neighbors. He will
8 tell you that he's always got along with McDonald's.
9 If anybody was going to complain about this, as far as
10 the neighbors, it would be McDonald's who has their
11 restaurant out front.

12 The red that you see there are trees that we
13 have.

14 There are special conditions that we think
15 that the Commerce Drive serves only for deliveries of
16 Rural King. When you come to this particular area and
17 come around to the end, the only place you come is a
18 10, 15 acre field back there, maybe a little larger.
19 It dead ends in that particular point.

20 The remaining land to the rear is not
21 developed. In the event that there would be a
22 development where screening would be involved, we
23 would certainly have no problem of doing that. There
24 has not been any screening other than what we have at
25 the present time since we purchased it. We did not

1 have any idea about a development plan that required
2 anything until we got this notice, whatever date that
3 Jim says in April, whatever date that they got it.

4 Strict application of this would deprive the
5 applicant of reasonable use of the land in that, and
6 this will be an explanation made by Mr. Davis, is that
7 Rural King is different than most other type of retail
8 stores in that their number one retail promotion is a
9 display. They use the display on outside and they
10 have it in the parking lot, which is allowed under the
11 Planning & Zoning Ordinance. There's not a question
12 about display because you can do that.

13 It's our contention that instead of being
14 where you have some of this outdoor interior
15 landscaping that you would require in here, we have
16 display items along there. It would not be necessary
17 to have the screening in these areas because the only
18 people that you would screen from would be the people
19 that use Commerce Drive, and nobody uses Commerce
20 Drive except the people that would get to the rear of
21 the building.

22 Now, that's the issue as far as the exterior.

23 Also, the calling confirmation conveyed
24 reproducing the interior for displays. The condition
25 is unique and I still think it's argumentative or we

1 can make a good argument about other retail stores
2 such as Wal-Mart and those areas. They're not
3 necessarily zoned industrial.

4 If we had this property zoned industrial, we
5 would not be required to have any type of the interior
6 or exterior landscaping.

7 The issue that we have at the present time is
8 one of time. The gentleman that owned Rural King,
9 there are three of them, as you'll see in your
10 application. They've made a diligent effort since
11 August of this year to sell the property. The reason
12 they're trying to sell the property is that they
13 intend to build another store here in Owensboro. It
14 will have 10 to 15 more employees than they have at
15 the present time.

16 They understand that if they build a new
17 building they have to qualify under all existing
18 screening regulations, but they did not know at the
19 time that they purchased this property that there was
20 any question about the screening. The screening that
21 is there now is pretty well what was there when they
22 purchased the property.

23 The development plan, as I explained to you,
24 is not a recordable document. Mr. Davis will explain
25 to you that he had no notice of any type of violation

1 until he got a call from Mr. Mischel.

2 We have the parking lot. We have three or
3 four issues that the Staff wanted us to address. We
4 addressed the park. I think we're required to have
5 150. On the development plan we'll show 199 parking
6 places.

7 I think basically our argument is that we
8 shouldn't have to qualify. We didn't in the past.
9 We've used this area since 1996 in the same manner
10 that we're using it today.

11 In any event, we're trying to sell the
12 property. Why would we be required at this time. We
13 have the property listed. We're trying to sell it.
14 Whoever buys that property will certainly I don't
15 think will be using the same area as Rural King. In
16 the alternative we're asking for some time to finish
17 the sale of this property.

18 Mr. Davis is here to give you some of his
19 opinions and we also have the store manager who has
20 been there, he's been there since the day it opened.
21 So if you have questions about the screening or
22 anything, this guy is the guy to ask because he's been
23 there since the very day.

24 Mr. Davis.

25 MR. ELLIOTT: State your name, please.

1 MR. DAVIS: My name is Don Davis.

2 (MR. DON DAVIS SWORN BY ATTORNEY.)

3 MR. DAVIS: I want to make one correction. My
4 title is actually CFO, so that it's recorded properly.

5 As Mr. Kamuf stated, I'm also the president of
6 Rural King Distributing.

7 I do want to confirm what he had said in
8 regards to we were not aware of the development
9 agreement until the situation came up in August was
10 when I first became aware of it.

11 We, again, purchased the property back in 1996
12 and that was just not a document provided during the
13 sale of the property.

14 I do want to point out some clarification. I
15 know it was discussed that we did not qualify as a
16 home center. The departments have seen that we sell
17 were brought up as part of that. Actually those
18 department that was mentioned, over half of those are
19 the same things that are sold in Home Depot and
20 Lowe's. So those are categories that we certainly
21 sell.

22 We are a unique business in regards to we're a
23 hybrid of different types of retailers in regards to
24 home center and then farm stores, which I don't
25 believe you guys have other farm stores of our size or

1 of our nature here in the community.

2 As Mr. Kamuf pointed out, we are trying to
3 sell the property and we're interested in trying to
4 find another property here in the area. Owensboro has
5 been a very good area to us. We like being in
6 Owensboro and we think we're a good fit for the
7 community. Because of that we became in a situation
8 where we need to expand because of not having enough
9 room inside of our location, let alone with regards to
10 the outside with our displays.

11 Was also mentioned that the landscaping, that
12 these requirements would maybe provide us a better
13 opportunity to display our merchandise. That's
14 actually incorrect in that fact that we did compromise
15 and coming into compliance with the parking
16 regulations. That required us to reduce our display
17 area, which actually has impacted our sales.

18 Our outside display areas are very important
19 to our business because of a customer, that be a
20 farmer, landscaper or home builder comes in and needs
21 those types of products. They want to be able to see
22 them and actually feel them to be able to purchase
23 them. So we've actually reduced our display area
24 recently through this process in trying to come into
25 compliance.

1 I also want to confirm that if we are able to
2 expand and find a facility here, we're having a little
3 bit of difficult time selling our property. It's over
4 a million dollar property to be able to sale. But if
5 we are able to expand, we will bring some additional
6 jobs to the area also.

7 I believe that's all I can provide
8 specifically on this issue. Are there any questions
9 specifically for me you would like to ask?

10 (NO RESPONSE)

11 CHAIRMAN: Thank you.

12 MR. DAVIS: Thank you.

13 MR. ELLIOTT: State your name, please.

14 MR. HOWARD: Greg Howard.

15 (MR. GREG HOWARD SWORN BY ATTORNEY.)

16 MR. HOWARD: I've been employed at Rural King
17 since 1996. I've been there since the first day that
18 we opened the store.

19 We've always been good neighbors with the
20 other businesses around us. Always tried to help each
21 other out. To my knowledge we haven't had any
22 complaints. Haven't heard of any complaints from
23 anyone up until now. That's basically all I have to
24 say. Any questions for me?

25 (NO RESPONSE)

1 MS. STONE: I just have a couple of points
2 from Mr. Kamuf's testimony that I would like to
3 clarify.

4 He's correct that development plans are not
5 recorded as plats in the courthouse; however, there
6 are land use restrictions recorded at the county court
7 clerk's office. Land use restriction on a piece of
8 property would indicate that there is a development
9 plan on file and that can be found at the office of
10 the Planning Commission. I believe Kentucky Revised
11 Statutes made that a requirement in 1988. So that
12 would have predated the 1992 development plan.

13 Then the other comment that I would make would
14 be he mentioned that industrially zoned property would
15 not be required to have interior landscaping. That is
16 also correct. However, this use would not be a
17 permitted use in an industrially zoned property.

18 MR. MISCHEL: I just have one comment.

19 I think this would be bad to do for one
20 reason, the property right now they have for sale.
21 Once this variance is given, it stays with the
22 property. They might sell this in two or three
23 months, but whoever comes in they won't have to
24 landscape either. If this property is for sale, it
25 looks like they could landscape and the cost on this

1 property would not be that much. The next tenant that
2 comes in would be ready to go.

3 The variance does not go with them. If they
4 leave the site, the variance stays with the site. It
5 gets in compliance now or it won't be in compliance.

6 CHAIRMAN: Any board members have any comments
7 at this time or questions?

8 (NO RESPONSE)

9 CHAIRMAN: Mr. Kamuf, do you have anything
10 else you want to add?

11 MR. KAMUF: No, except he's trying to be, Don
12 is trying to be a good neighbor along with Greg. For
13 us to put any of this additional landscaping in that
14 we've never been required to do since 1996 when he
15 owned it, would be null and void if we ever sold the
16 property because, in other words, whatever landscaping
17 that we're going to put in we'll have to put in at the
18 new property. It will be useless for us to put in there.
19 If we had some sufficient time to work this out where
20 we could get the property sold. It's been listed.
21 It's been listed since the first time that they got in
22 touch with me. We just think that this is the place
23 to go where we've been doing something that we had no
24 knowledge that we were in violation and that we -- it
25 will not do any good.

1 I don't have any problem about a temporary,
2 any type of temporary order where it would not run
3 with the land. We're not necessarily requesting that
4 it run with the land. In other words, we could have a
5 condition in there that in the event that we sell the
6 property, that the condition is null and void. We
7 don't have any problem. What good would it do us to
8 do this expensive landscaping and then come in in two
9 weeks or two months and sell the property. It hasn't
10 been a problem in the last ten years.

11 MR. MISCHEL: I don't believe we have what you
12 would call a temporary variance or anything like that.

13 MR. NOFFSINGER: I have a question for Mr.
14 Mischel.

15 How long have you been dealing with this
16 issue?

17 MR. MISCHEL: Since last I'd say March, April.
18 I sent a letter out April. It's been quite awhile.

19 MR. NOFFSINGER: And this is January '07.
20 Thank you.

21 MS. STONE: I think the definition of the
22 Kentucky Revised Statute says that a Variance runs
23 with the property. So I don't know how the board
24 would be able to, and that's a question for our
25 attorneys, I guess, make a decision in conflict with

1 the definition in KRS.

2 MR. ELLIOTT: It does run with the property,
3 yes.

4 MS. MASON: So you're saying that cannot be,
5 that cannot be a stipulation that we just do it
6 temporary?

7 MR. ELLIOTT: Right.

8 MS. MASON: I knew you were shaking your head
9 no earlier, but it wasn't said out loud.

10 MR. KAMUF: I talked to my client. If we
11 could have a period of a year to sell the property and
12 to start construction of the new one, in other words,
13 once we sell this we've got to start construction on a
14 new one. So if we could have a period of a year to
15 correct whatever is required.

16 We have spent a great deal of money with the
17 engineering firm to get most of the issue straightened
18 out. These are two that we don't have straightened
19 out yet. In other words, if we could have some
20 additional time to get it straightened out, I think we
21 could sell the property. I mean you just don't sell a
22 piece of property for 1,500,000 or over a million
23 dollars over a three or four month period.

24 The first thing that we did when they got me
25 involved is put the property up and list the property

1 for sale.

2 MR. SILVERT: That might be considered in the
3 appeal. Just throw that out. On the table right now
4 is the variance.

5 MR. KAMUF: I didn't understand.

6 CHAIRMAN: State that again.

7 MR. SILVERT: I was saying what you proposed
8 might be something that the board might consider in
9 the appeal. The variance is what's on the table right
10 now. Just wanted to straighten that out.

11 MR. NOFFSINGER: Madison, the appeal is on a
12 different matter. That has to do with the outdoor
13 storage and a whole other issue. This is about the
14 landscaping.

15 CHAIRMAN: Board members have any questions or
16 comments at this time?

17 MR. WARREN: Does this board have the power to
18 even give them a year?

19 MR. NOFFSINGER: I think that's what the
20 attorneys are saying. This variance is a variance and
21 it runs with the land. We have been dealing with this
22 issue since March. We couldn't get anywhere. We had
23 to file a formal violation, I believe, in August of
24 2006.

25 I don't know what engineering has been going

1 on. I do know we have a lot of material stored all
2 over that parking lot. If there's been any movement,
3 it's been a reduction in those materials because
4 they've been sold. Now we're moving into spring and
5 we're going to be looking at a greenhouse. We're
6 going to be looking at fertilizers. This is an issue
7 that needs to be addressed. We've been trying to
8 address it since March. In terms of perimeter
9 landscaping, the perimeter landscaping, that issue is
10 not going anywhere whether it's Rural King or a new
11 owner. Because the perimeter landscaping is a
12 requirement and it is where it is.

13 Unless this parking lot is defined with
14 planted areas, you're going to continue to see
15 materials placed all over. So we've got to outline
16 where these display areas are. Because when we
17 started with this, we were looking at an entire
18 outdoor storage area saying it had to be screened.

19 Well, the applicants argue now that these are
20 outdoor display areas? So we bought that. We
21 understand that and saying, you don't have to screen
22 those, but you still need to meet their interior
23 perimeter landscaping requirements that all other
24 corporate citizens in this community are expected to
25 follow. They're on the approved development plan.

1 I don't know what reasons there are to justify
2 a variance simply because, hey, we're getting ready to
3 move. We've got our land up for sale. We're looking
4 to go someplace else. You're still going to have
5 parking requirements for a new facility as well as
6 interior landscaping.

7 MR. DYSINGER: Gary, just so I understand.
8 The screening is not an issue here. On Commerce, I
9 guess, would be the big issue.

10 MR. NOFFSINGER: That would be your perimeter
11 landscaping along Commerce Drive and interior
12 landscaping. Screening would be an issue that will be
13 discussed on the next item, the appeal.

14 MR. MISCHEL: I feel like you've got an
15 approved development plan since 1992. It needs to be
16 complied with. For them to maybe pass it onto
17 somebody else, they just need to put it in now. Then
18 whoever buys this property will be in compliance.
19 It's got to go in. You might as well do it now as
20 later and pass it onto somebody else, which we might
21 be here again.

22 MR. KAMUF: Gary, in answer to your question.
23 You heard what the gentleman talked about. He talked
24 about that he had been there since 1996 and he said
25 there hadn't been any change whatsoever in the

1 property. It's been that way evidently since 1992
2 whenever the property was originally there. What
3 problem is it to give a little more reasonable time to
4 allow him -- he's not trying to circumvent. He didn't
5 do anything willful. What he has done, he bought a
6 piece of property. The man has told you he didn't --
7 evidently the title didn't show that there was a
8 development plan. Now, there might be. I haven't run
9 titles in the last several years.

10 What problem is it to give him a reasonable
11 period of time to get it straightened out or sell the
12 property?

13 MR. NOFFSINGER: Charlie, I think we've been
14 reasonable. We have been trying to work this issue
15 out since March of 2006. Almost one year. Here we
16 are today. This has been -- we've worked with you for
17 several months.

18 We have areas where material is being stored
19 in the right of way. We have areas where materials
20 are being stored not only in the right of way, but
21 along interior landscaped areas. We've had one
22 accident out there that we're responding to, yes, a
23 complaint. We've got the job to make sure that we
24 force this, enforce the ordinance in a consistent
25 manner.

1 In 1992 we have a plan here by Hale, Riney &
2 Gilmore that says these areas existed. I don't know
3 what happened to them. Staff is not pointing the
4 blame. Just like in the Staff Report. We said, we
5 don't know if willful violation or not. We're not
6 here to decide that. It's an issue of should the
7 variance be granted and what's the justification. The
8 timing of it, you know, how much time do you give?

9 MS. STONE: The board has an application
10 before it on a variance and they need to act on
11 approving or denying that application that's before
12 them tonight.

13 MR. DYSINGER: Mr. Chairman, if I could.

14 Mr. Kamuf, the issue of willfulness. From
15 1996, if nobody knew what was suppose to be done, I
16 guess you could make an argument there. However,
17 Staff makes an excellent point. The issue came up
18 originally with all the parties that are in this room
19 in March. I haven't heard a response to that from you
20 or your client in terms of why has it taken a year to
21 get to this point to even officially ask for a delay?

22 MR. KAMUF: He can answer that.

23 MR. DYSINGER: That would be great.

24 MR. ELLIOTT: State your name, please.

25 MR. DAVIS: Don Davis.

1 The reason for the time, and this might be a
2 misunderstanding on my part, but the issue that was
3 brought to us that seemed to be the significant issue
4 was the parking. We have made significant progress on
5 that parking. Again, we've lost sales in order to
6 keep getting compliance with that issue.

7 I did not realize that the landscaping was an
8 issue. You say it was on the original document. I'm
9 sure it was. But I understood, my interpretation was,
10 the issue was the parking was the issue.

11 I feel like the impression is being given that
12 there's been no progress made since March. In fact,
13 in your Staff Report it said there has been progress.
14 I apologize if there wasn't progress quick enough
15 again. We like being in this area. We're not trying
16 to cause a problem.

17 The issue in regards to the -- if I could make
18 another comment besides addressing your question.

19 MR. DYSINGER: Please.

20 MR. DAVIS: In regards to this being
21 temporary, we don't know what the use is going to be
22 down the road. The next people could be in a
23 situation where they want the landscaping in a
24 different area. They might want different landscaping
25 than we do. We are in agreement, we understand that

1 with new property we have to come into compliance with
2 that. We're just trying to get to the point of
3 getting to that.

4 I think with the paper locally, you guys saw
5 that, actually one of the owners of our company was
6 quoted in the paper. That we're looking for a new
7 property some months back. We've been investigating
8 that since.

9 MS. MASON: I think the ordinance states that
10 you have to put the landscaping in the areas where
11 it's shown here on the -- am I correct in that? That
12 no matter what's there, what business is there, you
13 still have to put landscaping where it is.

14 MR. DAVIS: This will, again, cause additional
15 hardship on our business because, if I understand what
16 I've been shown now on the original, there will be
17 areas that we're currently using for display that,
18 again, will have to be taken out, if the landscaping
19 requires the display can't be put with that
20 landscaping?

21 CHAIRMAN: In other words, you're over-built
22 on a small location?

23 MR. DAVIS: We are very much so, yes, sir.

24 MR. MISCHEL: Revising their development plan
25 for new parking standard they would meet the

1 ordinance. They would meet the parking and they would
2 meet the landscaping. They have room to put all of
3 that.

4 MR. DYSINGER: Can anybody tell me, either
5 side actually, with the minimum parking required and
6 then, is it 5 percent landscaping, Becky, that's
7 required?

8 MS. STONE: Yes.

9 MR. DYSINGER: And the five percent
10 landscaping. Can anybody tell me how much room that
11 would leave for display? Either party,

12 MS. STONE: Perhaps their surveyor or engineer
13 could. I couldn't do that off the top of my head.

14 MR. PEDLEY: I think it's on the plat 1951
15 square feet interior landscaping.

16 MR. DYSINGER: But doesn't this plat reflect a
17 higher parking requirement than what is in place
18 today?

19 MR. MISCHEL: I believe when they're finished
20 they're going to end up still with more parking
21 required. So they could use some of that. They could
22 dedicate that.

23 It seems like they're even going to have a
24 little bit more parking than we require under the new
25 standards.

1 MS. STONE: They estimated their required
2 parking at 150 spaces or calculated, I guess, based on
3 their retail area less some storage areas that the
4 Zoning Ordinance allows you to discount. The 166
5 spaces that I had in my Staff Report was just on the
6 gross square footage.

7 They're saying they need 150 and they're
8 providing 199. So there's an excess of 49 spaces that
9 could be used to accommodate some interior landscaping
10 outside of their display area.

11 MR. PEDLEY: Becky, excuse me. I stand
12 corrected on this site for variance application. It
13 states existing interior landscaping 3,937 square
14 feet.

15 MS. STONE: On the original development plan?

16 MR. PEDLEY: Yes.

17 MR. NOFFSINGER: Proposed plan in the
18 application.

19 MS. STONE: In the application.

20 MR. DYSINGER: So how many square feet are
21 left over for display?

22 Sir, if you can respond to that, that would be
23 great.

24 MR. DAVIS: I'm sorry, I cannot. I don't know
25 the exact square footage.

1 MR. DYSINGER: Do you know how much square
2 footage you're using currently for display?

3 MR. DAVIS: I'm afraid we have not measured
4 that by square footage.

5 MR. DYSINGER: I'll take a ball park.

6 MR. DAVIS: Can I make another comment,
7 please?

8 In regards to the parking spaces that there
9 obviously is a buffer there, if I could use that word.
10 It was pointed out that we are in a slower selling
11 season. You're correct, in the spring our outside
12 display area will grow some. Those 40 some spaces is
13 what we intend on using for. I do not believe that we
14 have the room to do the landscaping and for us to have
15 displays with meeting the parking requirements.

16 MR. DYSINGER: Keeping in mind that the
17 required landscaping only amounts to five percent of
18 the total area.

19 MR. DAVIS: I understand that.

20 MS. STONE: If they're going to use that 40
21 spaces for outdoor display, that needs to be
22 designated on their final development plan regardless
23 of what happens here tonight. That display area needs
24 to be fixed on the plan so that we can assure that
25 there's always required parking.

1 MR. DYSINGER: Not to get too far away from my
2 point.

3 If they designate it as display area for busy
4 season, like Mr. Davis is talking about now and that
5 stuff is gone, can they use it for parking or would
6 that cause an issue later? You can't call it parking
7 and then use it for display.

8 MS. STONE: Right.

9 MR. DYSINGER: Can they call it display and
10 use it for parking?

11 MS. STONE: Yes.

12 MR. DYSINGER: Just out of curiosity actually.

13 CHAIRMAN: A question. When you put the
14 greenhouse and the fertilizer and all your plants out
15 there and then when you bring another load of tractors
16 and park those in the parking lot, how much is left
17 then? I go by that place every day.

18 MR. DAVIS: Our understanding is that we will
19 have to have 150 parking spaces after that. It's
20 going to require us to operate different over this
21 next time frame until we can find a building or land
22 because we can't have the same amount of merchandise
23 we did last year spring and be able to comply with
24 that.

25 CHAIRMAN: You won't be able to park all your

1 tractors out in the parking lot and get by there.

2 MR. DAVIS: We won't be able to have as many
3 tractors, you're correct, and other merchandise.

4 CHAIRMAN: In the spring of the year, they're
5 all over.

6 Any other questions from the board?

7 MR. ELLIOTT: State your name.

8 MR. WEAVER: Dave Weaver, Bryant Engineering.

9 (MR. DAVE WEAVER SWORN BY ATTORNEY.)

10 MR. WEAVER: I'm David Weaver. I'm with
11 Bryant Engineering.

12 We've submitted a final development plan
13 that's currently being held.

14 Currently the subject property is about 4.7
15 acres. The designated outdoor display area that we
16 currently have is somewhere between one and a half and
17 two acres. We have 44 parking spaces beyond what's
18 required by the Zoning Ordinance. Then we have 150
19 required and 199 available. Theoretically we could
20 use the space allotted to that 49 parking spaces for
21 additional outdoor display which would be roughly
22 another acre of outdoor display we could add to the
23 subject property.

24 Of course, that's ball park numbers without
25 physically calculating that.

1 MR. DYSINGER: You said you had two acres
2 total outdoor or outdoor display?

3 MR. WEAVER: That's an estimation you
4 understanding. Basically just an estimate on what
5 we've got currently submitted with planning. It looks
6 to be about an acre and a half to two acres of outdoor
7 display that we're currently using.

8 MR. DYSINGER: And then maybe another acre
9 when you use the other 49.

10 MR. WEAVER: Yes, approximately.

11 MR. NOFFSINGER: I have a question for Mr.
12 Weaver.

13 Mr. Weaver, when you're talking about the
14 amount of display area, does that include all of the
15 equipment and tractors and whatnot that's lined up
16 along the entrance now or are you speaking of what's
17 shown on this plan or what's actually out there on the
18 lot now?

19 MR. WEAVER: Gary, I can't see what plan
20 you're looking at? Are you looking at a plan that we
21 submitted?

22 MR. NOFFSINGER: Yes, sir. Yes.

23 MR. WEAVER: The plan that we submitted we
24 surveyed in the actual limits of where items are for
25 sale of outdoor display. So that would include, to my

1 knowledge I believe that includes all of the tractors
2 and mulch.

3 MR. NOFFSINGER: Well, there are tractors
4 lined up along the front drive aisle in front of the
5 store where you show painted islands.

6 MR. WEAVER: Is that the area that would be in
7 the northern corner, Gary, where we've got the outdoor
8 display area?

9 MR. NOFFSINGER: Yes, sir. Number 28 maybe,
10 56, where you have the number of parking spaces shown.
11 Perhaps in those areas. Are you looking at the site
12 plan that you prepared?

13 MR. WEAVER: Yes.

14 MR. NOFFSINGER: Right in front of Family
15 Dollar and then right in front of the store you have
16 painted islands. I think you have tractors there.

17 MR. WEAVER: You're correct. I don't believe
18 we are showing that as outdoor display in that general
19 area.

20 I think Rural King does have some outdoor
21 display on the walk and they may have some up closer
22 to the building that we didn't block off in our
23 overall display area.

24 MR. NOFFSINGER: I guess these areas that
25 you're showing as painted islands that would not be

1 parking areas. Are those going to be display areas
2 or -- that's typically where you'd find the interior
3 landscaping. If it's just a painted area and you're
4 not going to display or it becomes a painted area
5 where you're not using it for anything.

6 MR. WEAVER: That would be a question for Mr.
7 Davis or the manager of Rural King because I'm not
8 sure that painted area would be big enough to really
9 display much.

10 MR. NOFFSINGER: Right. I know that right now
11 there are tractors in some of those areas and other
12 items. That's typically where your interior
13 landscaping would go, and that's not shown on this
14 plan as a display area.

15 MR. WEAVER: It could be that we didn't fully
16 define that as the display area if they have a tractor
17 or two in that general vicinity. I'm not really for
18 sure.

19 MR. NOFFSINGER: Thank you.

20 MR. WEAVER: Any other questions?

21 (NO RESPONSE)

22 MR. PEDLEY: I would like to get Mr. Mischel
23 back up one more time.

24 Has there been a revised final development
25 plan submitted for approval?

1 MR. MISCHEL: There was one submitted to our
2 office and we had some comments on it. It's just kind
3 of in limbo right now.

4 We have made some statements on that, that
5 they needed to tie down display areas, show exactly
6 where they're going. At this time that hasn't been
7 turned back in to us. I guess they're waiting.

8 MR. PEDLEY: So the site plan for the variance
9 application is not correct?

10 MR. NOFFSINGER: Have they officially
11 submitted an application for a final development plan
12 or are we just looking at a review copy?

13 MR. MISCHEL: This is a review copy. I talked
14 to Brian today and he sent comments back.

15 MR. NOFFSINGER: Did we receive an application
16 for a final development plan and filing fee?

17 MR. WEAVER: That is correct. We have
18 submitted a final development plan that when we
19 submitted it at that time I believe I got a call from
20 Jim. Of course, this is early November. At that time
21 I believe what we were told by, I don't know if Jim
22 called or Brian called, but someone called and said
23 that that needed to be held. We needed to submit a
24 variance to address the outdoor display areas and the
25 landscaping issues.

1 MR. MISCHEL: Brian is holding that and in our
2 discussions we talked about display areas have to be
3 more defined and that's where we're at.

4 MR. WEAVER: Today we have not received a mark
5 up. Obviously we would work with the Planning Staff
6 to fully define the outdoor display areas when this
7 landscaping issue gets beyond.

8 MR. PEDLEY: What I'm reading on this site
9 plan that I think we need in the record. "In the
10 event that the landscaping variance is not obtained by
11 the Board of Adjustment, the owner shall be required
12 to establish 1,951 square feet of interior
13 landscaping, plant 23 interior trees, establish 550
14 linear feet of perimeter landscaping, plant 5
15 perimeter trees."

16 Are those numbers correct or are they to be
17 adjusted?

18 MR. MISCHEL: We haven't reviewed. I would
19 say it has to be as what's -- we have not reviewed
20 that yet. Brian has that in his office. I would
21 think tonight -- I can't tell you if those figures are
22 right or not. It would have to be in compliance with
23 the landscaping ordinance.

24 MR. PEDLEY: We need to ask for the new site
25 plan to be filed for required landscaping and

1 buffering and outdoor display areas.

2 MS. MASON: This site plan is for the
3 variance.

4 MR. PEDLEY: We're here on a variance. We
5 don't want to give a variance based on this site plan
6 that's not correct is what I'm saying.

7 MR. MISCHEL: Not using those figures.

8 MR. PEDLEY: So we're asking for a new outdoor
9 display and site plan.

10 MR. MISCHEL: I would say it just has to
11 comply with the landscape ordinance or as per the
12 development plan. They're going to amend their
13 development plan.

14 MR. DYSINGER: But these numbers here that --

15 MR. MISCHEL: Those are their numbers.

16 MR. DYSINGER: Based on this plan, the one in
17 the application?

18 MR. MISCHEL: The engineer came up with.

19 MR. DYSINGER: So the one in the application
20 is what we're looking at moving forward, as opposed to
21 this one that's from 1992?

22 MS. STONE: Yes.

23 MR. NOFFSINGER: If I might add. The one from
24 1992 also shows a half acre parcel that was to be
25 developed at a later date subject to final development

1 plan approval, which there hasn't been any plan
2 submitted for that. However, it has been improved
3 without outdoor display, vehicular use areas, parking
4 areas. That's also, that lot is also a part of this
5 variance request because the site plan in the
6 application shows what they intend to do with that
7 property. However, in '92 they weren't going to use
8 it.

9 MR. DYSINGER: Okay.

10 MS. STONE: The final development plan that
11 was submitted also includes that tract. If the
12 variance is denied, then their final development plan
13 will be submitted showing landscaping as required
14 under the current ordinance and their outdoor display
15 areas will be shown and will be based on the vehicular
16 use area that's remaining, the perimeter landscaping.
17 If the variance is approved, you've waived all of that
18 landscaping. So their final development plan would
19 not show any landscaping or interior landscaping.
20 That's why one of the conditions is the final
21 development plan, you know, must be addressed
22 regardless of the decision.

23 MR. WEAVER: Can I interject. Would the final
24 development plan be a good mechanism to address a
25 timetable related to the landscaping? That we could

1 put a note on the final development plan stating when
2 the landscaping needed to be in place and that would
3 give Rural King time to be able to dispose of the
4 properties and move on?

5 MR. MISCHEL: I don't believe we have a time
6 mechanism in our ordinance.

7 MR. WEAVER: Typically what you would do is
8 the developer would post a landscaping bond and then
9 put it in whenever it became time for them, whatever
10 they chose. I'm not sure what the time frame is on a
11 bond form.

12 MR. NOFFSINGER: David, I think the Staff's
13 position on this would be that how much time are we
14 going to give? We've been dealing with this since
15 March. We've got an issue that we're responding to a
16 complaint. There was an accident in the parking lot.
17 We're responding to a complaint. We have a violation
18 out there. We're trying to correct that violation.
19 There's several things that need to happen. One is an
20 amended development plan. The other is landscaping
21 needs to be installed.

22 Yes, at some point it's going to have to be
23 installed and when is that date. We've been working
24 since March and now under official violation since
25 August. I don't know that any of us know what that

1 date is going to be, but until we get a handle on the
2 landscaping and get that installed and get some
3 organization out there on that site, we're going to
4 continue to experience what we've experienced in the
5 past. That is the growth of these display areas in
6 that parking lot. I don't think that anyone that's
7 been out there I think could see that there are
8 visibility issues in that parking lot and navigating
9 that parking lot. We're trying to address this not
10 only from an aesthetic point of view, but also a
11 public safety point of view.

12 MR. MISCHEL: I started back in March on this.
13 I don't know many telephone calls, how many
14 discussions. I honestly believe that if it wasn't for
15 this Notice of Violation we wouldn't be here tonight.
16 I still would be making phone calls. Still having
17 discussions. It's been doing that since March and I
18 don't think it's --

19 MR. KAMUF: Jim, the issue on the interior and
20 perimeter outdoor screening did not become an issue
21 until after I was involved in the case. I guess we
22 talked. You and I have talked and met for a month or
23 so. The key issue at that time, wait until the
24 parking ordinance is changed. The ordinance was
25 changed in November, was it not?

1 MR. MISCHEL: Well, it's always been an issue.

2 MR. KAMUF: The parking was the only issue
3 that we had. After we got the parking issue resolved,
4 then that's when the issue came in about the perimeter
5 of the interior landscaping.

6 MR. MISCHEL: We talked about it in March and
7 April in discussions and officially was written out in
8 August. It's on your violation of landscaping.

9 MR. KAMUF: We've had it since August, as far
10 as the violation.

11 MR. MISCHEL: You've had it since before then.
12 We've been working in good faith.

13 MR. KAMUF: I understand that. Once I started
14 working with you, in other words, that didn't become
15 an issue until August, as far as the landscaping.

16 MR. NOFFSINGER: No, sir. What Mr. Mischel is
17 saying, he's been working on that issue since March.
18 It was put down in writing in the form of a violation
19 in August. It's been an issue since March.

20 MR. KAMUF: It wasn't an issue the first part
21 when I got involved. The only issue at that time that
22 we talked about was the parking. He said, get the
23 parking straightened out. We waited. There wasn't
24 any sense in doing anything until the ordinance was
25 changed. When was that changed?

1 MR. MISCHEL: I think mainly that was your
2 all's main interest was the parking. We had a lot of
3 interest, but I think all you all wanted to talk about
4 was the parking at the beginning. I had landscaping
5 in and parking and the outdoor storage. I kind of had
6 all of them.

7 MR. KAMUF: When was the ordinance changed on
8 parking?

9 MS. STONE: It went to the Planning Commission
10 in October. So it was probably December or late
11 November.

12 MR. KAMUF: November or December.

13 MR. NOFFSINGER: October, November. It wasn't
14 December.

15 MR. KAMUF: It wasn't approved by the
16 legislative body until after that time. You all
17 approved it --

18 MR. NOFFSINGER: It was approved by the
19 legislative bodies by November.

20 MR. KAMUF: Yes.

21 MR. NOFFSINGER: Regardless of that issue, Mr.
22 Kamuf, you still had a violation and you still had the
23 responsibility to correct that violation. It was in
24 your best interest to hold off for the parking
25 requirements to be reduced. I don't think Mr. Mischel

1 was requesting that you hold off on that, but you saw
2 that as certainly to your advantage.

3 You know, here we are today. We've accepted
4 that. How much longer are we going to put it off?

5 MS. STONE: Waiting for the parking reduction
6 did not prevent you from putting in perimeter
7 landscaping. That would have been in the same
8 location regardless of what your parking count would
9 have been.

10 MR. DYSINGER: Jim, would you tell me one more
11 time. What started all of this in March? We've
12 talked a lot about parking. What instigated this
13 whole thing in March? Was it the phone call about the
14 --

15 MR. MISCHEL: Accident.

16 MR. DYSINGER: That's what started this whole
17 thing was a safety issue.

18 MR. MISCHEL: We went out there to check it.
19 We had another call too about the storage items and
20 everything. Going out there and looking up the
21 address, as we do normally when we check out a site,
22 there was a development plan.

23 CHAIRMAN: Any other boards members have any
24 comments or questions at this time?

25 (NO RESPONSE)

1 CHAIRMAN: Mr. Kamuf, do you have anything new
2 to add?

3 MR. KAMUF: No, Mr. Chairman.

4 CHAIRMAN: Does Staff have anything else new
5 to add?

6 (NO RESPONSE)

7 MR. PEDLEY: Is Chair ready for a motion?

8 CHAIRMAN: I so am.

9 MR. PEDLEY: I want to make a motion to deny
10 the variance based on the Findings 1) it may adversely
11 affect the public health, safety and welfare. Based
12 on the purpose of landscaping is to promote the
13 aesthetic appeal of the neighborhood and to promote
14 public health, safety through reduction of noise,
15 pollution and likewise. Landscaping promotes
16 environmental conditions.

17 Two, it may cause a hazard or nuisance to the
18 public by allowing vehicles to travel through unpaved
19 and non-vehicle use areas onto streets. I have seen
20 that happen up there.

21 Three, it will allow an unreasonable
22 circumvention of the requirements of the zoning
23 regulation because the strict application will not
24 cause an undue hardship on the applicant and may set a
25 precedent for others to follow to eliminate

1 landscaping.

2 With that the applicant will file a
3 development plan showing landscaping and outdoor
4 display according to the ordinances.

5 CHAIRMAN: Is there a second to the motion?

6 MR. DYSINGER: Second.

7 CHAIRMAN: A motion has been made and a
8 second. Any other comments or questions from the
9 board members?

10 (NO RESPONSE)

11 CHAIRMAN: Staff have anything else?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Hearing none all in favor raise
14 your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries unanimously.

17 Next item, please.

18 -----

19 ADMINISTRATIVE APPEAL

20 ITEM 6

21 501, 601 Commerce Drive, zoned B-1
22 Consider a request for an Administrative Appeal to
23 appeal the Zoning Administrator's interpretation that
24 the tractor trailer, pallets stacked with unwrapped
25 products, bundled cardboard and empty pallets
constitute outdoor storage and must be screened with a
6' high continuous wall or fence.
Reference: Zoning Ordinance, Article 8,
Section 8.5.14(k), Article 17, Table 17.311(5a)
Applicant: Kermit Speer, Bruce Speer, Gary Melvin

1

2 MR. NOFFSINGER: Mr. Chairman, Mr. Mischel is
3 here to present his findings regarding this case.

4 MR. MISCHEL: Jim Mischel.

5 I would like to pass around some photos and
6 maybe you all just pass down the line and everybody
7 take a look at. I'll give everybody a minute.

8 MR. KAMUF: May I ask a question, Mr.
9 Chairman?

10 CHAIRMAN: Yes, sir.

11 MR. KAMUF: Are these photographs that you're
12 passing, are they from the four violations that we
13 have?

14 MR. MISCHEL: There's a series of photos and I
15 think I gave you a copy of all of them.

16 MR. KAMUF: The four?

17 MR. MISCHEL: There was probably 20 of them
18 all together.

19 MR. KAMUF: Those are not in issue. There's
20 only four in issue.

21 MR. MISCHEL: I'm just giving them some
22 background.

23 MR. KAMUF: Okay.

24 CHAIRMAN: Jim, while we're looking at them go
25 ahead.

1 MR. MISCHEL: These photographs that you are
2 looking at right now, if you go by strict
3 interpretation of the code and if you go under 8.5
4 site development requirements, it does state that all
5 outdoor areas under Section K, that these items could
6 be displayed. It says for the access open to the
7 public display of operation vehicles or other finished
8 products for retail.

9 So we're saying go by strict interpretation,
10 these items could be displayed. We don't have a
11 problem with that. The only problem we would have
12 would be on the -- there are four pictures I think
13 here. I think that's what we're addressing here.

14 MR. NOFFSINGER: Point of clarification for
15 the record, Mr. Mischel. You stated that you do not
16 have a problem with these. You don't have a problem
17 with these items being categorized as display.
18 However, you do take issue in some cases with the
19 placement or where these items are placed on the
20 property.

21 MR. MISCHEL: Yes. I mean it's going to have
22 to be a dedicated space for display.

23 MR. NOFFSINGER: And not inside the public
24 right-of-way.

25 MR. MISCHEL: Not on public right-of-way.

1 MR. NOFFSINGER: Or landscaping.

2 MR. MISCHEL: Or landscape areas.

3 MS. MASON: Some of the pictures that we have
4 seen along here are not displayed in the correct --

5 MR. MISCHEL: We're talking about the items.

6 MR. NOFFSINGER: What he's showing there --

7 MS. MASON: The items can be displayed. They
8 just may not be in the right area.

9 MR. NOFFSINGER: Right. These are not, the
10 items he has shown you in these colored photos are not
11 at issue under this appeal. Is that a correct
12 statement?

13 MR. MISCHEL: Yes. These four here, I'm going
14 to put one in the record. These four items here we
15 have talked with them and we do take issue with these
16 four. I've numbered them. If you take a look at
17 them.

18 This first one is a storage trailer. The
19 storage trailer on picture Number 1, items are stored
20 inside that. So we don't think that's a display
21 itself. That should not be there is what we're
22 saying.

23 Picture Number 2 show pallets on the side and
24 around back. There's some cardboard that has been
25 bound together. There's some empty barrels there.

1 Also stacks of pallets. Looks like plastic wrapped
2 around some black. We believe this it bulk items.
3 You can't even tell what it is. In our opinion, it's
4 not displayed because if you walked up to it you don't
5 know what you're looking at. It's just bundled up.

6 Picture Number 3 is a better picture of all
7 that material in black plastic. We believe the
8 pallets are not displayed. We believe these items
9 ought to be behind a fence.

10 Number 4, again, we don't believe that's
11 display. That's more of storage item and should be
12 within a fenced area.

13 A lot of these other items, like I said I'm
14 not saying where they're at is okay. It's just the
15 items are displayed.

16 It shouldn't be on public right-of-way. It
17 shouldn't in a landscaped area. It should be within a
18 development plan it will have defined space where
19 display is.

20 MR. DYSINGER: But that's not an issue right
21 now as much as it's -- you guys are working on that
22 now, correct?

23 MR. MISCHEL: It's a matter of this
24 Administrative Appeal is what we're talking about
25 here.

1 MR. DYSINGER: Those four pictures.

2 MR. MISCHEL: Now, I'm not saying just those
3 four. In the future it might be something else.
4 These are typical of what we're looking at.

5 MS. MASON: If this trailer was closed up,
6 that still is not allowed?

7 MR. MISCHEL: That's right because it's
8 storage. It's not a displayed item.

9 MS. MASON: The fact that it's open they're
10 trying to show it as a display.

11 MR. MISCHEL: I think they just store stuff
12 inside it and bring it out.

13 MS. MASON: Okay.

14 MR. MISCHEL: I believe these four pictures
15 here is what we're talking about here.

16 MR. NOFFSINGER: You're saying that these
17 items should be stored inside a 6 foot high, maybe
18 taller, privacy fence or chain-link with some type of
19 screening material?

20 MR. MISCHEL: We thought, you know, most of
21 this, except for this trailer, is occurring around the
22 side and the back. We thought maybe installing,
23 screening a fence around the back side will keep those
24 items back there and dedicate the front of it to the
25 display area and show it on the development plan.

1 CHAIRMAN: Any questions of the Staff at this
2 time?

3 MR. NOFFSINGER: No.

4 CHAIRMAN: Any board members have any
5 questions?

6 (NO RESPONSE)

7 CHAIRMAN: Mr. Kamuf.

8 MR. KAMUF: Let's talk about the trailer
9 first.

10 The trailer located on this front that we see
11 here is part of an outdoor display area open to the
12 general public. The applicant utilizes the trailer
13 and its covering for straw. Inside that trailer is
14 straw, I was out there today, which is being marketed
15 for sale inside the trailer.

16 As illustrated in the picture, steps have been
17 taken to construct. You see a step going up to the
18 area. The reason for that is so that they can take
19 the straw out and show it to the public.

20 Number 2, the pallets with wrapped material.
21 That's the one we have on the right. The applicant
22 has pallets on the subject property with marketable
23 finished products wrapped in plastic. That's what we
24 see here.

25 Typically the applicant unwraps one pallet of

1 each bulk at a time. However, it's not uncommon for
2 the applicant to sell a complete pallet, as we see
3 here. The applicant contends that these wrapped items
4 are for sales as they could be purchased as individual
5 bags or by the pallet.

6 Number 3, the other two. This is the one on
7 the bundle of cardboard that we see here and the other
8 one on the left. The applicant contends that it's not
9 uncommon for any retail store to have bundled
10 cardboard and empty pallets awaiting removal from the
11 site at any given time. These items are not being
12 stored but simply awaiting removal from the site.

13 We have taken 18 different pictures in
14 Owensboro of other areas. We took these all within a
15 period of one hour. The reason that makes an
16 important point is because two hours later it will
17 look different. Let me introduce these.

18 The first exhibit is Exhibit Number 2. It's
19 bundled cardboard behind Save-A-Lot. That's the same
20 reason that this is bundled is because within the next
21 24 hours it will taken away or there will be more
22 cardboard.

23 I'll just pass these around.

24 Empty pallets at K-Mart on Parrish Avenue.
25 The same situation that we have here. These are empty

1 pallets. What are the pallets going to be used for?
2 They bring in goods. They take the pallets off.
3 That's exactly what we have in this exhibit that we
4 see here.

5 The next exhibit that we have pallets
6 containing mulch, landscaping material at the K-Mart.
7 If you see this one on K-Mart, it has a fence around
8 it, but it doesn't have a 6 foot fence as they're
9 going to require us to do.

10 Exhibit Number 5, bundled cardboard at Hobby
11 Lobby. Same situation as we see the cardboard here.
12 These pictures were taken within an hour. We could
13 have taken a thousand of them.

14 These violations are standard in Owensboro, if
15 there is a violation. We're saying it's not. These
16 are temporary items that are there until they can be
17 removed that afternoon or in the morning by a truck.

18 This one here, the bundle that you see in
19 front of Hobby Lobby.

20 Here is another one that you see at Home
21 Depot. Pallets containing mulch, landscaping
22 material. That's what this one here is. It is for
23 sale. Empty pallets at Home Depot.

24 Number 8, pallets containing mulch,
25 landscaping material at Home Depot.

1 Pallets containing mulch, landscaping material
2 at Home Depot.

3 Here's another one. This is bundled cardboard
4 at the Target. All of these were taken in the last
5 three weeks.

6 Now we're going to get to some stuff. You've
7 been waiting for Wal-Mart. I could have another 25,
8 but here's Wal-Mart, Exhibit Number 11. Bundled
9 cardboard, Wal-Mart on Frederica Street. That is
10 being what? It's sitting there because they're
11 getting ready to take it off the next morning. Empty
12 pallets, Wal-Mart on Frederica Street. Bundled
13 cardboard, Wal-Mart. Here is pallets. Look at this
14 one here. We have a few pallets. Wal-Mart must have
15 several dozen.

16 Exhibit Number 15, bundled tires. Just as we
17 have a bundle here. You see tires that are bundled
18 where they're taken out one at a time out of a bundle.

19 Here's another one at Wal-Mart. Empty
20 pallets.

21 Wal-Mart kind of outdid Lowe's, but here is
22 some on Lowe's. Pallets containing mulch, landscaping
23 material at Lowe's.

24 Empty pallets at Lowe's.

25 Bundled cardboard at Lowe's.

1 Right down the road here is Carpet Unlimited
2 out in front, in front of their building with pallets.

3 Here's a nursery. I think this is on Burlew
4 Boulevard. Pallets containing mulch, containing
5 materials, Integrity Nursery.

6 This is on one of the busiest streets that we
7 have in town. On the corner of Breckenridge and Old
8 Hartford Road. Pallets containing landscaping
9 material at the Marathon service station on
10 Breckenridge.

11 Here is bundled cardboard at K-Mart. This is
12 the K-Mart on Frederica.

13 Here's another one. You can see that they
14 have it fenced in, but it's not where you can't see
15 through it.

16 All we're asking is the same treatment that
17 everybody else in town is getting as far as these.
18 The only issue would be of any difference on any of
19 these would be the truck.

20 Mr. Davis is here and he will explain about
21 the trucks.

22 Do you have any questions about those? I
23 think they're pretty well self-explanatory.

24 Is there any difference in pallets here? Any
25 difference in materials containing mulch for resale or

1 cardboard than those? They were all taken within a
2 period of one hour. We've got to be reasonable about
3 this. If you've got temporary things that are going
4 to be removed right away, certainly you don't have to
5 put them in a screened storage area. Because most of
6 those are not screened in a storage area.

7 MR. PEDLEY: Can you tell us what zone that
8 Lowe's, Home Depot, Wal-Mart and all of those are in?
9 We have a B-1 zone that we're talking about. What are
10 the zones that you --

11 MR. KAMUF: You know that the service station
12 out -- I can go over each one of them with you and
13 that will be okay, if they want to.

14 MR. MISCHEL: I think there's a lot of
15 violations out there. Every day you're going to have
16 a violation. Not only in code, but police work and
17 everything else.

18 Typically on the same token you're saying you
19 want to be treated like everybody else. That's what a
20 lot of people think about your landscaping. They put
21 landscaping in and you didn't. Why aren't they
22 treated the same way as we are?

23 Lowe's, Home Depot, Wal-Mart, if you go by, a
24 lot of those places do have solid fencing.

25 MR. KAMUF: They didn't in those photographs.

1 MR. MISCHEL: If you go out there, you'll see
2 some screening where they keep a lot of product.
3 Again, that's enforcement thing. They let it spill
4 out, but they do have solid fencing. You go to Lowe's
5 they keep their products --

6 MR. KAMUF: Jim, why would you be so definite
7 in trying to get those people to take cardboard and
8 pallets out and require that to be in a storage area
9 with screening around it? Why is that such an issue
10 where they're going to be removed the next day?

11 MR. MISCHEL: I don't know that they're going
12 to be removed the next day.

13 MR. KAMUF: All over town, they're not stored
14 up.

15 MR. MISCHEL: That doesn't mean everybody is
16 going to remove it the next day. Some people do and
17 some people don't. In this case, it's impossible to
18 throw a blanket over the whole town and say, everybody
19 come in compliance? We had complaints at this site
20 here.

21 MR. KAMUF: That's not the issue on this. You
22 didn't have a complaint about this.

23 MR. MISCHEL: When we go to see about the
24 complaint, we go out there and look at the site and
25 here is what we find. We find landscaping and storage

1 and things like that.

2 We did after talking with you and everything,
3 we said that some of those items should be displayed
4 and that's why we're saying that they should be
5 allowed.

6 It's not what I want or I'm determining to
7 get. It's just what the ordinance is.

8 MR. KAMUF: Are you saying that those three
9 are in violation and the rest of them in the county
10 are not in violation? Are those pictures, are they
11 wrong?

12 MR. MISCHEL: No. I said there's probably a
13 lot of violations out there. I didn't say the rest of
14 the county doesn't have none. I said there's a lot of
15 violations in the county.

16 I guess it's like a speeding ticket. Why am I
17 getting a speeding ticket if somebody else is
18 speeding? You deal with the one that you're dealing
19 with.

20 MR. KAMUF: Are you going to enforce all of
21 those violations tomorrow?

22 MR. MISCHEL: Probably not tomorrow.

23 MR. NOFFSINGER: But they are made a matter of
24 public record and Mr. Mischel will be pursuing that I
25 can assure you.

1 Some of those case are -- you mentioned
2 K-Mart, Save-A-Lot. Those are grandfathered uses.
3 Have been there for years prior to the adoption of the
4 Zoning Ordinance. There's not anything that Mr.
5 Mischel can do.

6 MR. KAMUF: That new Wal-Mart is not.

7 MR. NOFFSINGER: I said some of those, Mr.
8 Kamuf. I mentioned Save-A-Lot and K-Mart. Those are
9 two. Those we can't do anything on, but the others
10 Mr. Mischel will. They've been brought to his
11 attention and he will have to do it.

12 One of the differences here at this particular
13 location is it's highly visible from not just Commerce
14 Drive from US 60 bypass. People coming in and out of
15 town, visitors into town and people that live here can
16 see that site quite frequently.

17 Now, some of those pictures there that you're
18 pointing to had pallets with items stacked on it.
19 Well, I guess they're displayed areas because you're
20 receiving the benefit of the display areas out in
21 front.

22 MR. KAMUF: Then that's a display area.

23 MR. NOFFSINGER: I think Mr. Mischel might
24 have stated that perhaps that one is. We're looking
25 at examples. This particular area is certainly not

1 shown as a display area on your development plan.

2 MR. KAMUF: Are you going to say that crates
3 where they are removed every day and is a temporary
4 item that's right there on the property is going to be
5 removed the next day, that that is a violation of some
6 Zoning Ordinance?

7 MR. NOFFSINGER: Yes, Mr. Kamuf, it may very
8 well. If it's here today and gone tomorrow, that's
9 one thing. But if it's here for several days and
10 they're stacked up. You know, what is the schedule?
11 I'd like to know the schedule on removal of this
12 cardboard and pallets because from what I can tell
13 that's a daily occurrence and it seems not to change
14 much. I may be in error. Maybe this is an unusual
15 day.

16 MR. MISCHEL: Do they remove these every
17 single day?

18 MR. KAMUF: I can't answer that.

19 MR. NOFFSINGER: That's what was stated.
20 They're removed on a daily basis. That's a lot of
21 pallets.

22 MR. DAVIS: Those are removed as we have
23 trucks come in. It depends on the season. We will
24 have trucks every day sometime in the busy times of
25 years. There are other times where it's every two

1 days. This is a higher volume store and so we have
2 more trucks here and they're removed each time a truck
3 comes. Does that answer your question?

4 MR. NOFFSINGER: Yes, sir.

5 MR. MISCHEL: I would encourage Mr. Kamuf and
6 the representatives of Rural King to come to the
7 office tomorrow. I'll be glad to show them about
8 Lowe's, Home Depot, and Wal-Mart where they've been
9 cited in the past for storage. It is a continual
10 problem. I can cite them and they can come into
11 compliance and they might be out of compliance in a
12 month, six months or whatever, but I would welcome you
13 all to come tomorrow and we'll sit down and just look.

14 MR. DAVIS: I'm unable to do that. I drove
15 four hours to be here tonight.

16 MR. MISCHEL: We'll make copies and send them
17 to you. I would welcome you to come down and take a
18 look at that just to show you that we are trying to be
19 consistent.

20 MR. DAVIS: Can I make some comments about
21 some of these pictures, please?

22 In regards to the trailer there, the first
23 picture here on the left-hand side of the board there,
24 that is a straw trailer. That is all that's in that.
25 That is sold on a regular basis. That inventory turns

1 on a regular basis. We're constantly replenishing
2 that merchandise.

3 It is not storage where merchandise, all kinds
4 of different merchandise is stored. I thought that
5 was one of the comments that was made. In that
6 trailer right there, that is just straw.

7 I want to address specifically, and you would
8 only know this if you're in our business, or Wal-Mart,
9 Home Depot, Lowe's. This merchandise right here, I
10 will guarantee the city or the county does not want
11 Rural King or any other group to unwrap multiple
12 pallets of that merchandise because that merchandise
13 will just fall off the pallets. That's the reason
14 that we have one pallet at a time.

15 There was also a comment made. We sell
16 several full skids or pallets of that merchandise.
17 This mulch is terrible merchandise to handle and it
18 will get much messier if we're required to unwrap
19 every pallet that we have.

20 MR. DYSINGER: Mr. Chairman, can I ask a
21 question?

22 The issue of the straw truck. Are customers
23 allowed to enter the straw truck and look at the
24 straw?

25 MR. DAVIS: They are allowed to. I can't say

1 that that's happens all the time. Customers want to
2 go in and review the bales and see what kind of bales
3 they want, then they might. I can't say every
4 customer wants to do that. Yes, they're allowed to do
5 that.

6 MR. DYSINGER: It is open for that.

7 MR. DAVIS: Yes, sir.

8 MR. MISCHEL: Let me say that I think our
9 office if these pallets, the pallets I'm talking about
10 in the back, were put out that day, I don't know if
11 there's a pallet company that comes by --

12 MR. DAVIS: Sorry to interrupt. We bring them
13 back to Mantune, Illinois and they're disposed of
14 there. They're reused or disposed there. That's the
15 same with the cardboard. All of our stores do the
16 exact same thing. Not just the Owensboro location.

17 MR. MISCHEL: I would think if those pallets
18 are put out that day and they're taken and that
19 cardboard is bundled up, rolled up in the back and
20 somebody is there to pick it up, that's one thing.
21 For these items to be stored there for many days or
22 weeks, that's a different item. I don't know if
23 you're telling me that they're taken away every day,
24 that might be a different story.

25 MR. DAVIS: I would again repeat. I did not

1 say every day. When we have trucks, which is
2 sometimes every day, sometimes it's every two days,
3 based on the volume of the store and the volume of the
4 season. I would be very surprised if you could find
5 instances where we have the same pallets, the same
6 cardboard there for weeks, which is what you stated.

7 MR. MISCHEL: I think our solution to Mr.
8 Kamuf was to put a fence so far in the back to screen
9 it from the public view. For items that might be
10 there. Pallet with white plastic around them, I don't
11 know how long it has been sitting there. I'm sure you
12 don't either. If it's been sitting there for a long
13 time, maybe just until --

14 MR. DAVIS: But this is displayed merchandise.
15 Not storage merchandise.

16 MR. MISCHEL: Well, that's where we differ. I
17 say it's display if they took the plastic off, the
18 white plastic, you could see what it was. Mulch --

19 MR. DAVIS: Again, you don't want us to do
20 that. I'm just being honest with you.

21 MR. MISCHEL: I'm just saying --

22 MR. DAVIS: If you look, and I would hope you
23 agree. If you look at the majority of our
24 merchandise, it is uncovered there. I think there are
25 very few instances where it's covered like that.

1 That's specifically because of the type of product and
2 the fact that we're trying to keep it cleaner and
3 neater than if we unwrap it.

4 MR. MISCHEL: I think the difference is if
5 anybody got out of the car and walked around back and
6 looked at that pallet, I wouldn't know what was in
7 there, as far as display.

8 MR. DAVIS: I completely disagree. In regards
9 to customers that buy that merchandise on a regular
10 basis, they know exactly what that merchandise is.

11 MR. MISCHEL: Then they don't really need the
12 display. They just come inside and say, I want this.

13 MR. DAVIS: We don't have that inside.

14 CHAIRMAN: Okay. We're arguing over nothing.
15 The same thing over and over.

16 Jim, have you got anything new to add?

17 MR. MISCHEL: No.

18 CHAIRMAN: Have you got anything new to add?

19 MR. DAVIS: No, sir.

20 CHAIRMAN: Mr. Kamuf, you got anything new?

21 MR. KAMUF: That's it.

22 CHAIRMAN: Does the board have any questions
23 or comments at this time?

24 MR. DYSINGER: I've got a couple.

25 First off legally. The pictures that we're

1 dealing with, is it possible to take them apart?
2 Meaning can we state that, yes, this is in fact a
3 display, but this is not, or do we have to take all
4 four of these issues?

5 MR. ELLIOTT: You can take one at a time.

6 MR. DYSINGER: That's it for right now.

7 CHAIRMAN: Does Staff have anything else to
8 add?

9 MR. NOFFSINGER: I do have one question of
10 Mr. Davis.

11 On picture Number 2 or item Number 2, that's
12 the pallets that are wrapped with the mulch. Are
13 those pallets located on your property?

14 MR. DAVIS: I am not sure the answer to that
15 question. This is behind our facility I believe so
16 I'm not sure exactly where it's located in regards to
17 the property line.

18 MR. NOFFSINGER: The reason I ask that
19 question, it appears to me that those pallets are not
20 even located on your property. Because looking at
21 this site plan it may or may not be. If they're not
22 located on your property, that's another issue because
23 then it becomes off-site. Perhaps those pallets we're
24 looking at -- I think we've already addressed in terms
25 of outdoor display the merchandise that's contained on

1 that, in that manner. Since these are off-site, I'm
2 not sure that we really should be considering that as
3 a particular area or a particular use that you're
4 considering.

5 MR. DAVIS: Is your issue where they are
6 located? Because we've stated from the start we are
7 truly -- you might not believe it. We're trying to be
8 good neighbors. I would agree that if that's stored
9 on someone else's property, we need to move it. I
10 have no problem with that.

11 MR. NOFFSINGER: Sure. I'm not sure -- I
12 guess it would be where they're located because if
13 they're not located on this property, it's not even an
14 issue here.

15 I guess what we're considering is that
16 particular arrangement of pallets, merchandise. What
17 is that? Is that display or is that storage?

18 MR. DAVIS: That is merchandise for sale. I
19 don't want to cause a problem and continue to repeat.

20 MR. NOFFSINGER: Thank you.

21 MR. DYSINGER: Gary, is Staff stating that
22 they don't believe that it's even an issue because it
23 may not be on the property? Is that what you guys are
24 saying at this point or not?

25 MR. NOFFSINGER: I think the real issue here

1 in looking at these pictures would become the trailer,
2 the pallets, empty pallets, and the cardboard. If you
3 look at this picture with the trailer,
4 tractor-trailer, you've got some cardboard next to it,
5 and then you've got some drums that I think is
6 merchandise for resale and you've got some water tanks
7 and whatnot. Those items I think they're saying those
8 are display items, but many of those items are within
9 their interior landscaping area and some likely on
10 right of way. I think we need to clarify what we're
11 considering as storage. I think it's 1) the trailer,
12 2) the cardboard, and 3) the pallets.

13 Is that the issue?

14 MR. DYSINGER: You mean the pallets that are
15 empty waiting to be, according to the appellate, taken
16 away or the pallets with merchandise on them?

17 MR. NOFFSINGER: No. Not the pallets with
18 merchandise on it.

19 MR. DYSINGER: Is it the Staff's opinion that
20 the pallets that we see with merchandise on them are
21 not on the appellate's property and therefore
22 shouldn't be considered?

23 MR. NOFFSINGER: Well, that's my opinion.

24 MR. DYSINGER: Is that Staff's opinion?

25 MR. NOFFSINGER: Well, that's Staff's opinion.

1 However, we don't know that. We're not certain, but
2 they appear to be out there in the corn field.

3 CHAIRMAN: In other words, we're not
4 considering Number 4.

5 MR. NOFFSINGER: Here is what I'm getting at,
6 and maybe clarify it.

7 If the applicant is saying that the pallets
8 with the mulch are display items, then they need to be
9 in an area that's defined on their development plan as
10 display area.

11 MR. DYSINGER: Which we don't have anyway.

12 MR. NOFFSINGER: At this point we don't, but I
13 think we will. I can understand that.

14 However if they were to say, well, the cart of
15 empty pallets and the pallets with cardboard are going
16 to be in a display area, therefore they're on display,
17 then we wouldn't buy that. If they're saying that
18 these items, the mulch are within a display area
19 that's approved on their development plan, then I
20 think that's satisfactory. Because that's what you're
21 seeing in some of these other pictures and that's what
22 you see on the front of their property.

23 MS. MASON: Could the trailer be in a display
24 area that's on the site plan?

25 MR. NOFFSINGER: That's a good question.

1 That's a tractor-trailer that's used for storage.
2 They are storing, in my mind, they are storing items
3 within that area. I think it's questionable. I think
4 that's a decision that the board is going to have to
5 make in terms of, you know, what it is. At this point
6 I'm going to support my staff and say that's storage.
7 I think that's within the board's judgment in terms of
8 the way they've described the use of this and the way
9 it's set up as to whether or not you believe that's
10 storage or that's display.

11 MR. KAMUF: Mr. Chairman, one thing. This
12 might help.

13 When we met with the Staff about all those
14 other pictures, they said we're in violation. We
15 showed them this provision of the ordinance and they
16 agreed to it. They just didn't agree to it as to
17 those four pictures.

18 Here is this what the ordinance says. "It is
19 the applicant's contention that the existing outdoor
20 display meets these requirements." Here they are.
21 "All outdoor areas or yards that are used for storage
22 or manufactured products, materials to be used in
23 manufacturing, wholesale commodities, automobile, junk
24 yards, salvage and scrap iron yards not including
25 areas for employ or customer parking nor areas that

1 are open to the public for the permitted display of
2 operational vehicles or other finished products."

3 I don't think there's any question that those
4 things are on pallets. We're not trying to say --
5 talk about the location. We're just saying when you
6 have those type of items for what? For finished
7 products for retail. That it's a display item under
8 this provision of the statute of the ordinance. I
9 mean that's quite clear, I think. You understand?

10 MR. NOFFSINGER: No.

11 MR. KAMUF: Here's the ordinance.

12 MR. NOFFSINGER: Is that in your application
13 or what are you reading from?

14 MR. PEDLEY: It's in the Zoning Ordinance.

15 MR. NOFFSINGER: I don't have the Zoning
16 Ordinance.

17 MR. KAMUF: It's 8-9(k). It has a quote
18 around it, if you notice. Then it says, "are open to
19 public for permitted display of operational vehicles
20 or finished product for retail."

21 This is a finished product for retail.

22 MR. NOFFSINGER: What's that now? What is
23 this?

24 MR. KAMUF: I'm saying every one of them.

25 MR. NOFFSINGER: You're saying those empty

1 pallets are finished products for retail?

2 MR. KAMUF: We're talking about here.

3 MR. NOFFSINGER: No. We gave you that one.

4 MR. KAMUF: Okay. Then on the trailer. In
5 other words, the trailer is there. Why is the trailer
6 is? So people can walk up. It has an access point
7 going to it, where you have steps going up to it. Is
8 that not for retail sale?

9 MR. NOFFSINGER: Does that factor in to your
10 square footage of your building?

11 MR. KAMUF: You'd have to talk with those guys
12 about square footage. I don't know.

13 MR. NOFFSINGER: I've stated my position on
14 that one, Charlie. I'm unclear on it. I'm going to
15 support Staff's position on it. The board has to make
16 a judgment call there. That's why you're appealing
17 it.

18 MR. WEAVER: The trailer was not counted in
19 the building square footage, but if the Staff would
20 like us to and address the comments in the final
21 development plan, we certainly could. We'd have
22 sufficient parking to cover the retail square footage.

23 MR. DYSINGER: I would hope that as the guy
24 putting together the new development plan, you've
25 listened very closely to everything that was said here

1 know.

2 The items that you see here. On the pallets,
3 this one here and this one down here, those are behind
4 the building. The trucks pull in behind the building
5 and they take those out daily or every couple of days
6 or pretty quick after that. These pallets along with
7 this cardboard, that doesn't stay in front. Bring in
8 a truck, take away the pallets, take away the
9 cardboard.

10 MS. MASON: But isn't that area at the bypass?
11 People see it when they're going down the bypass.

12 MR. NOFFSINGER: Yes.

13 MR. KAMUF: I'm sure they can. If it's there
14 temporarily. How do you work that out? Somebody
15 takes a low end and they automatically have to take
16 the bundle of paper or a bundle of --

17 MS. MASON: Well, a lot of businesses they do.
18 They break up the cardboard and put it in the
19 dumpster. Now, I understand this sort of business
20 with pallets, you know. I just know from my
21 experience, I guess I could say.

22 MR. KAMUF: We're talking about retail items.
23 I think that would be just about an impossibility,
24 other than --

25 MS. MASON: I'm talking about the pallets and

1 the cardboard is what I'm talking about.

2 MR. KAMUF: That's what I'm talking about.
3 How do you remove those within 24 hours every day?
4 Jim Mischel won't have anything to do but enforce
5 those ordinances.

6 I'm asking. Is it two or three days? Is two
7 days too long to have storage behind so another truck
8 could come in and take it away?

9 MR. NOFFSINGER: Charlie, I think it's hit on
10 the storage. That's what we're dealing with. The
11 other piece of property that's zoned B-1, which is a
12 neighborhood business center that requires a
13 development plan and your development plan has been
14 approved clearly shows that you're not going to have
15 any outdoor storage in that area.

16 MR. KAMUF: Is it outdoor storage?

17 MR. NOFFSINGER: On each and every development
18 plan that comes in, Planning Staff, we address outdoor
19 storage areas among many other things.

20 MR. KAMUF: Sure.

21 MR. NOFFSINGER: That's what we have to
22 address here. You're not showing any areas for
23 outdoor storage. However, that's what this area is
24 being used for. It's a storage area of items to be
25 stored awaiting removal. You stated yourself it's

1 storage. I think that's what we're -- it's not a
2 display, then it becomes storage. If it's not
3 storage, what is it? This board can't alter, they
4 can't do anything about these other sites. They can't
5 alter what the zoning ordinance says. They have to
6 make a determination as to whether or not Jim made the
7 right appropriate decision. That is classifying these
8 as outdoor storage areas. If they're not, then what
9 are these areas?

10 MR. KAMUF: It's a pick-up point. They pick
11 it up. They drive a truck in. They drop off
12 something and they pick it up and take the item away.
13 Is that storage? I don't think so.

14 MR. DYSINGER: Mr. Kamuf, when they come in
15 and pick up these pallets and so forth, do other
16 pallets come in with merchandise on them?

17 MR. DAVIS: I'm sorry, your question was?

18 MR. DYSINGER: When they come in with the
19 truck to pick up the empty pallets, they come in with
20 more pallets of merchandise on them.

21 MR. DAVIS: Yes, sir.

22 MR. DYSINGER: The merchandise is taken off
23 and the pallets are put back in the same spot.

24 MR. DAVIS: Yes.

25 MR. DYSINGER: So even though they're picked

1 up -- I worked in retail for a lot of years. I'm not
2 unsympathic to your problem here.

3 In essence there is always pallets stacked up
4 there and always bundled cardboard. It may not be the
5 exact same pallets and bundled cardboard as yesterday,
6 but --

7 MR. DAVIS: I can't say that there are always.
8 There will be the majority of the time some type of
9 material.

10 MR. DYSINGER: In that area?

11 MR. DAVIS: Yes.

12 MR. DYSINGER: Thank you, sir.

13 CHAIRMAN: Does anyone got any new
14 information?

15 MR. HOWARD: Greg Howard.

16 On the pallet issue, those pallets do flow.
17 We're continually getting trucks. I mean if you drive
18 by there you may think they sit there for days and
19 days at a time, but they do not. They do get loaded
20 back on the trucks and they're taken out on a regular
21 basis and more may be stacked back there for another
22 truck at a later time.

23 CHAIRMAN: Thank you.

24 Does the board have any other questions or
25 comments?

1 (NO RESPONSE)

2 CHAIRMAN: Staff have any new information?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Mr. Kamuf, have you any new
5 information?

6 MR. KAMUF: I wish I did, but no.

7 CHAIRMAN: Waiting for the board to make a
8 decision.

9 MR. DYSINGER: What's the best way to do this
10 in terms of taking them? I'll state right now that I
11 do think that some of these issues are storage and
12 some of them aren't display. I can't vote on this
13 appeal all the items at one time. How is the best way
14 to handle that?

15 CHAIRMAN: Mr. Attorney, answer his question,
16 please.

17 MR. ELLIOTT: I think that you need to
18 determine which one the Zoning Administrator is
19 correct on. Item Number 1, Item 2, Item 3. And which
20 one you disagree with, as far as --

21 MR. DYSINGER: Before we make a motion.

22 MR. ELLIOTT: Yes.

23 CHAIRMAN: Do we include that in his motion?

24 MR. ELLIOTT: Yes.

25 MR. DYSINGER: Included in the motion?

1 MR. ELLIOTT: Yes.

2 MR. SILVERT: And I think you need to be clear
3 since the numbering on the appeal is different than
4 the numbering on the other exhibits. That you
5 identify which one you're using the numbers for.

6 MR. NOFFSINGER: I recommend you go with
7 what's in the application.

8 CHAIRMAN: Excluding Number 2. That's back
9 in the corn field.

10 MS. MASON: We still have to deal with it,
11 don't we, since it's part of the application?

12 MR. MISCHER: I don't think we deal with it
13 because that item might show up on their property.
14 You would either approve it as a display area or not.
15 They could tomorrow move it back over. I would think
16 you consider it.

17 MR. DYSINGER: It's either storage or it's
18 display. That's what's at issue. Whether the item
19 pictured is storage or display; is that correct?

20 MR. ELLIOTT: Right.

21 MR. DYSINGER: Mr. Chairman, I move to uphold
22 the appellant on Item 1 of the trailer. I believe it
23 is a display area. Giving the findings that it's open
24 to the public and the merchandise is clearly for sale.

25 I further move that Items 2 and 3 and 4 are

1 outdoor storage. On Item 2, given the finding that
2 there is no signage and no other indication of what
3 the merchandise is or what it would sell for.

4 On Items 3 and 4, given the finding that the
5 testimony we heard states that the areas used for
6 storage of refuge until it could be hauled away.
7 That's my definition of storage.

8 CHAIRMAN: Is there a second?

9 MR. PEDLEY: Second.

10 CHAIRMAN: A motion has made and a second.

11 Board members have any other comments or questions?

12 (NO RESPONSE)

13 CHAIRMAN: Staff have any other comments?

14 MR. NOFFSINGER: No, sir.

15 MR. DYSINGER: I would like to say one thing.

16 On the issue of signage on merchandise that's on
17 display, it doesn't matter if somebody comes in and
18 knows what it is because it's the business that
19 they're in. It seems to me it's more important what a
20 reasonable person would understand. Looking at the
21 merchandise display, it's difficult to tell what it
22 is, what it's for sale for, that sort of thing. I
23 just want to make that determination of the motion. I
24 just wanted that in the record.

25 MR. PEDLEY: I'd like to clarify one thing.

1 The items in the application 1, 2, 3 and 4 are
2 different than the numbers --

3 MR. DYSINGER: We stated that the application
4 photos.

5 MR. TAYLOR: If I disagree with one point that
6 he has, I'm going to disagree with his whole motion,
7 correct?

8 MR. NOFFSINGER: Correct.

9 MR. TAYLOR: It's not going to be an
10 individual basis. It's saying that he thinks one is
11 display and two, three and four are storage. So if I
12 just disagree with one of those, I disagree with the
13 whole motion?

14 MR. DYSINGER: I believe that's correct.

15 MR. ELLIOTT: Yes.

16 CHAIRMAN: Our legal counsel has advised us.

17 All in favor raise your right hand.

18 (ALL BOARD MEMBERS PRESENT - MARTY WARREN,
19 SEAN DYSINGER, RUTH ANN MASON, C.A. PANTLE, WARD
20 PEDLEY AND JUDY DIXON - RESPONDED AYE.)

21 CHAIRMAN: All opposed.

22 (BOARD MEMBER CLAY TAYLOR RESPONDED NAY.)

23 CHAIRMAN: Motion carries.

24 MR. KAMUF: Mr. Chairman, may I ask one
25 question?

1 Sean, your issue was if it had a sign out
2 there for sale, it would have made a difference as far
3 as your opinion?

4 MR. DYSINGER: I think based on the testimony
5 that we heard, it's display. Again, I want to state
6 that there's no display area that I know of that's
7 been designated. We're just trying to deal with
8 things based on this application. Is this a display
9 of goods for sale or is it storage? Given that, I
10 think in the future when there's display areas and
11 non-display areas, I think that will all change, but
12 given that, if a reasonable person or, for instance, a
13 person driving by on the bypass looks down and there's
14 signage and there's a price and so on and so forth,
15 it's a reasonable assumption that that is a display
16 for sale. If there is no signage, you can't tell what
17 it is and, Mr. Davis, you stated that somebody who
18 buys that product could come in and know exactly what
19 it is. I have no doubt of that. However, if a
20 reasonable person off the street can't tell what it
21 is, it's probably storage and not a display. That's
22 the reasoning behind the motion that I made. If that
23 helps you guys going forward, all the better.

24 MR. NOFFSINGER: Mr. Dysinger, you're not
25 saying in any way that if they would put a sign on

1 pallets or cardboard saying "cardboard or pallets for
2 sale," that that would in any way change what your --

3 MR. DYSINGER: No. Again, in the record, as
4 you guys are moving forward on your process and
5 designating display area and storage area, it will
6 make, I hope, most of this mute.

7 CHAIRMAN: I'll entertain one final motion.

8 MS. DIXON: Move to adjourn.

9 MS. MASON: Second.

10 CHAIRMAN: All in favor raise your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: We are adjourned.

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1 STATE OF KENTUCKY)
)SS: REPORTER'S CERTIFICATE
2 COUNTY OF DAVIESS)

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 102 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 25th day of January 2007.

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19

LYNNETTE KOLLER FUCHS
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
21 OWENSBORO, KENTUCKY 42303

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COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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